

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

Title: AFFIRMATION/DISCUSSION AND VOTE

Location: ONE WHITE FLINT NORTH, ROCKVILLE, MARYLAND

Date: THURSDAY, DECEMBER 15, 1988

Pages: 1-3

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Court Reporters

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

3 ***

4 AFFIRMATION/DISCUSSION AND VOTE

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6 PUBLIC MEETING

7 ***

8 Nuclear Regulatory Commission
9 One White Flint North
10 Rockville, Maryland

11
12 Thursday, December 15, 1988

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14 The Commission met in open session, pursuant to
15 notice, at 3:30 p.m., the Honorable LANDO W. ZECH, Chairman of
16 the Commission, presiding.

17 COMMISSIONERS PRESENT:

18 LANDO W. ZECH, Chairman of the Commission

19 THOMAS M. ROBERTS, Member of the Commission

20 KENNETH CARR, Member of the Commission
21

STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:

22

23

S. CHILK, SECY

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M. MALSCH, OGC

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P R O C E E D I N G S

[3:30 p.m.]

CHAIRMAN ZECH: Good afternoon, ladies and gentlemen.

We have one item to come before us this afternoon.

Before I ask the Secretary to walk us through this item, do any of my fellow Commissioners have any comments to make?

[No response.]

CHAIRMAN ZECH: If not, Mr. Secretary, you may proceed.

MR. CHILK: The paper before the Commission, Mr. Chairman, is SECY-88-322 entitled "Promulgation of a Final Rule Required by Omnibus Budget Reconciliation Act of 1987." In this paper, the Commission is being asked to approve a final rule amending 10 CFR Parts 170 and 171 to require that those licensees requiring the greatest expenditure of Commission resources pay the greatest annual fees and to increase the total fees collected to at least 45 percent of the NRC budget, as required by current legislation.

All Commissioners have approved the final rule with the modifications made by Chairman Zech and Commissioner Carr.

Would you please affirm your votes?

CHAIRMAN ZECH: Aye.

COMMISSIONER ROBERTS: Aye.

COMMISSIONER CARR: Aye.

CHAIRMAN ZECH: Is there anything else to come before

1 us?

2 MR. CHILK: I have nothing else, sir.

3 CHAIRMAN ZECH: All right. We stand adjourned.

4 [Whereupon, at 3:32 o'clock, p.m., the Commission
5 meeting was adjourned.]

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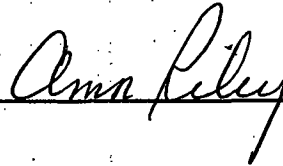
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TITLE OF MEETING: AFFIRMATION/DISCUSSION AND VOTE

PLACE OF MEETING: Washington, D.C.

DATE OF MEETING: THURSDAY, DECEMBER 15, 1988

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RULEMAKING ISSUE

November 16, 1988

(Affirmation)

SECY-88-322

For: The Commissioners

From: Victor Stello, Jr.
Executive Director for Operations

Subject: PROMULGATION OF FINAL RULE REQUIRED BY THE OMNIBUS BUDGET RECONCILIATION ACT OF 1987

Purpose: To obtain Commission approval of a final rule that amends 10 CFR Parts 170 and 171 to reflect the objective that those licensees requiring the greatest expenditure of Commission resources should pay the greatest annual fees and to increase the total fees collected to at least 45 percent of the NRC budget as required by current legislation.

Category: This paper covers a significant policy and budget matter.

Background: Proposed Rule History (SECY 88-149)

On June 27, 1988 (53 FR 24077), the Commission published for public comment a proposed rule implementing the requirements of Section 5601 of the Omnibus Budget Reconciliation Act of 1987 (OBRA) as signed into law on December 22, 1987 (Public Law 100-203). The proposed amendments would: (1) remove the fee ceilings for application reviews and inspections for power reactors, fuel cycle facilities, transportation cask packages and shipping containers; (2) revise the hourly rate for NRC professional time spent providing various regulatory services and provide for annual adjustment; (3) revise upward the ceiling on annual fees assessed pursuant to 10 CFR Part 171; (4) include, when appropriate, reimbursements from the Department of Energy Nuclear Waste Fund; (5) charge for each routine and nonroutine inspection conducted by the NRC; (6) remove amendment application filing fees for power reactor and reactor related (topical) reports, and (7) remove the application fee and defer payment of costs for standardized

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492-7351

design reviews and certifications until a standardized design is referenced. These changes were referred to as Option 1 in the notice of proposed rulemaking.

The Commission also sought comment on a second option under which no changes would be made to Parts 170 and 171 other than to raise the annual fee so that when added to the fees collected under Part 170 the total would approximate, but not be less than 45 percent of the NRC budget.

Public Comments: Thirty-two public comments were received. They are addressed in detail in the draft final rule (Enclosure 1). The comments are summarized in Enclosure 2. Because of the time needed to review all comments, to publish a final rule, and to send out additional invoices so that collections would be received prior to the end of FY 1988, the Commission published Option 2 on August 12, 1988 (53 FR 30423), as a final interim rule (SECY-88-225) applicable only to FY 1988. The rule became effective September 12, 1988. Adjusted annual fee invoices were sent to licensees on August 16, 1988. These invoices have been paid and the total collections in fees for FY 1988 were \$178.5 million. The NRC was required by the legislation to collect at least \$177 million (\$392.8 million x 45%). Two lawsuits have been brought by nuclear utilities challenging the interim rule.

Discussion: Fee recovery under Part 171 can be distinguished from fee recovery under Part 170 on the basis that Part 170 fees recover NRC costs directly attributable to an identifiable licensee, such as license application reviews and inspections. Legal authority for such a recovery is found in the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701). In contrast, the annual fee in Part 171 is to recover generic costs applicable to nuclear power reactors (with an operating license), but not clearly attributable to a specific license (such as research, rulemaking, regulatory development, etc.). For all power reactor licensees under Part 171, the staff has identified generic costs on the basis of type or class of reactor, as appropriate, using FY 1989 NRC budget program elements and attendant activities as the basis for the annual fee. The Section-by-Section Analysis of the draft final rule provides a more detailed presentation of the revision and its impact upon licensees.

While comments are summarized and discussed in Enclosure 1, we would particularly like to bring to the Commission's

attention two issues raised by the commenters. First, we turn to a Part 171 comment by the B&W Owners Group (OG) and our proposed action on this comment. This OG consists of seven licensees with eight operating plants and two under construction. One of the concerns of the OG is that the Multi-Loop Integral System Test (MIST) facility is a program that NRC agreed to co-fund with them. They state that it is inconsistent with the agreement to pass back part of the NRC's share of the MIST costs to B&W owners by way of user fees. It is the OG's position that this item and costs should be eliminated from the proposed schedule of activities included in the costs to be assessed under 10 CFR Part 171 to B&W reactor owners.

The staff proposes that the MIST item will be retained in the schedule. It is our position that the user fee allocation methodology (those licensees who require the most expenditure of NRC resources, pay the most) requires the allocation of all NRC costs related to generic activities. The NRC does provide funding for the MIST program as well as other cooperative programs. Being an agency cost item, the MIST program as well as the costs for all other current and future cooperative programs should be used in the cost allocation data base. Moreover, we do not view this as a breach of the co-funding agreement by NRC with the OG because the current agreement is about to expire and a new agreement is being negotiated. All of the \$2.7 million included in the user fee base is for activities that would be funded by the new agreement rather than the existing one. Before entering into the new agreement, this final rule will have been promulgated putting the OG on notice of the agency's revised user fee policies. It should also be pointed out that in the past two phases of MIST co-op research (Phase 3 and Phase 4) the owners group paid only about one-half of the NRC contributions for Phase 3 and did not provide funds for Phase 4. Since almost 90 percent of all funds budgeted in areas subject to fee recovery under Part 171 will be collected through user fees, if co-op research programs were exempt from the fee base, the co-op groups would receive fee exemptions not available for other research--inequitably shifting the fee burden to other licensees.

Secondly, with respect to Part 170 topical report reviews, several companies filed comments concerning the elimination of the \$20,000 maximum ceiling for such reports. They argue that with the upper limit on the costs removed, the risk will be viewed as excessive and will discourage the submission of such reports. As a result, they point out that the NRC may be required to conduct plant-specific and

repetitive reviews of topical issues which may have the unwanted effect of increasing the expenditure of staff resources. This would, they argue, defeat the overall objective of encouraging new and improved predictive models and products.

We recommend that the ceiling of \$20,000 be eliminated for topical report reviews as in the proposed rule. During CY 1987, thirty-one topical reports were completed. Under the current fee schedule, the average cost per case is approximately \$29,000. The cost range for these cases was from a low of about \$200 to a high of \$146,500. Twelve of the thirty-one cases (39%) exceeded the \$20,000 ceiling and the NRC was unable to recover approximately \$550,000 because of the ceiling limitation. If the FY 1989 hourly rate (\$86) were applied to the same cases, the average cost per case would be approximately \$41,000. Seventeen of the thirty-one cases or 55% of them would exceed the \$20,000 ceiling if the FY 1989 rate were applied. If the ceiling is eliminated, then those applicants who require the larger expenditure of NRC resources will pay the larger fees. However, we have, in the statement of consideration to the final rule, indicated that 10 CFR 170.11(b)(1) currently provides an exemption provision whereby the NRC may, upon its own initiative or upon request of an applicant, grant exemptions from Part 170 license fees. In those cases where the submission of topical reports is of great benefit to the NRC, the staff envisions giving serious consideration to fee waiver requests.

In addition to the changes in Part 171, it is proposed that Part 170 be revised to raise fees, based on the FY 1989 budget and eliminate fee ceilings. Together, these efforts should maximize the Commission's ability to efficiently recover a greater share of its budget and collect, for deposit into the U.S. Treasury, the \$189 million required in FY 1989. The NRC is also seeking to recover its budgeted obligations for high level waste regulatory activities from the Nuclear Waste Fund managed by DOE. This will be accomplished through the Memorandum of Understanding that the NRC recently entered into with DOE.

The final changes to 10 CFR Parts 170 and 171 are essentially as set forth in the proposed rulemaking (SECY-88-149 dated May 27, 1988) that the Commission approved on June 16, 1988, except for the following and a few minor editorial changes.

1. Part 170:

- a. The hourly rate in the proposed rule was \$80 per professional staff hour based on FY 1988 budget data. The new hourly rate is \$86 based on FY 1989 budget data.
- b. The fee schedule for inspections that was previously included in 10 CFR 170.32 has now been incorporated in 10 CFR 170.31 for user convenience and to shorten the rule. By doing this, all materials license fees and services are under one section rather than two sections.

2. Part 171:

The annual fee cost range per reactor has changed from \$1.2 million - \$1.5 million to \$1.1 million - \$1.6 million. This change is as a result of using FY 1989 budget data and a more detailed identification matrix on research costs for grouping licensees.

The legality of Commission's current Part 171 user fee schedule was upheld by the D. C. Circuit in Florida Power and Light v. NRC. The petitioners there have asked the Supreme Court to review that decision. Should the D. C. Circuit decision be overturned, the proposed revisions to Part 171 may be similarly invalid.

Coordination: The Office of the General Counsel has reviewed the final rule and has no legal objection.

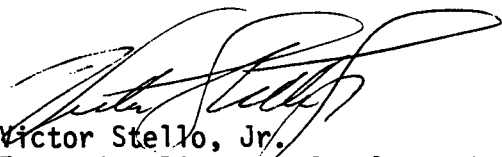
Recommendation: That the Commission--

1. Approve the publication of the revised Parts 170 and 171 as a final rule to comply with the statutory requirements of Section 5601 of OBRA (Enclosure 1).

2. Note that:

- a. The final rule would become effective 30 days after publication in the Federal Register.
- b. The House Committee on Interior and Insular Affairs, the House Committee on Energy and Commerce, the Senate Committee on Environment and Public Works, and the Budget and Appropriations Committees will be notified by letter (see Enclosure 3).

- c. A public announcement will be issued when the final rule is filed with the Office of the Federal Register for publication (see Enclosure 4).
- d. The Federal Register notice will be mailed to all affected NRC licensees.
- e. This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paper Reduction Act of 1980 (44 U.S.C. 3501 et seq.).
- f. Action required under this rule is administrative and will not impact the environment; therefore, neither an environmental impact statement nor an environmental assessment (10 CFR Part 51.22(c)(1)) has been prepared for this rule.
- g. The final rule is administrative and would assess fees for regulatory services provided by the NRC for nuclear power reactor licensees. The final rule does not impose any new, more stringent safety requirements on Part 50 licensees. Accordingly, the backfit rule in 10 CFR 50.109 does not apply to this rule.
- h. This rule does not have a significant economic impact upon a substantial number of small entities.
- i. Fees collected will be deposited with the U.S. Treasury as miscellaneous receipts.


Victor Stello, Jr.
Executive Director for Operations

Enclosures:

- 1. Final Draft Revisions to Parts 170 and 171
- 2. List and Summary of Comments
- 3. Draft Congressional Letter
- 4. Draft Public Announcement

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Friday, December 2, 1988.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Friday, November 25, 1988. with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the Week of December 5, 1988. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

Revision of Fee Schedules

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (Commission or NRC) is amending its regulations by revising its fee schedules contained in 10 CFR Parts 170 and 171. The revised fee schedules will result in those reactor and materials applicants and licensees requiring the greatest expenditure of NRC resources paying the greatest fees. This permits NRC to more completely recover under 10 CFR Part 170 costs incurred for identifiable services for reactor facility applicants and licensees and for major materials applicants and licensees. This action also implements fee legislation enacted by Congress in December 1987. All applicants and licensees currently subject to fees under 10 CFR Parts 170 and 171 are affected by this rule.

EFFECTIVE DATE: (30 days from publication).

ADDRESSES: Copies of the written public comments are available for public inspection and copying for a fee at the NRC Public Document Room at 2120 L Street, NW., Washington, DC, in the lower level of the Gelman Building.

FOR FURTHER INFORMATION CONTACT: Lee Hiller, Assistant Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20055, Telephone: 301-492-7351.

SUPPLEMENTARY INFORMATION:

- I. Background.
- II. Responses to Comments.
- III. Changes Included in the Final Rules.
- IV. Section-by-Section Analysis.
- V. Environmental Impact: Categorical Exclusion.
- VI. Paperwork Reduction Act Statement.
- VII. Regulatory Analysis.

VIII. Regulatory Flexibility Certification.

IX. Backfit Analysis.

X. List of Subjects.

I. Background

On June 27, 1988 (53 FR 24077-24093), the Commission published in the Federal Register a notice of proposed rulemaking for revisions to 10 CFR Part 170 ("Fees for Facilities and Materials Licensees and Other Regulatory Services . . .") and Part 171 ("Annual Fees for Power Reactor Operating Licenses"). This action was necessary for the Commission to update the current fee schedules in Part 170 and to implement the requirements of Section 5601 of the Omnibus Budget Reconciliation Act of 1987, as signed into law on December 22, 1987 (Pub. L. 100-203). Section 5601 amended Section 7601 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA - Pub. L. 99-272), which requires the Commission to collect annual charges from its licensees. As discussed in the notice of proposed rulemaking published on June 27, 1988, the amendment requires the NRC to collect under 10 CFR Parts 170 and 171, as well as under other provisions of law, not less than 45 percent of the Commission's budget for each of Fiscal Years 1988 and 1989 (Option 1).

The proposed rule also sought comments on a second option to not change 10 CFR Part 170, but only raise the annual fees under 10 CFR Part 171 to reach the 45 percent mandate of Pub. L. 100-203 for FY 1988. On August 12, 1988, the Commission published an interim final rule change for 10 CFR Part 171 (53 FR 30423) applicable to collections for FY 1988 based upon the second option. The interim rule increased collections from 33 percent to 45 percent of the Commission's FY 1988 budget. Adjusted invoices based on the interim rule were sent to reactor licensees on August 16, 1988.

As discussed in the interim rule, the Commission will proceed with option 1 rather than option 2 as a long-term rule for annual fees. The method for assessing annual fees in this final rule presents a more equitable distribution among the licensed nuclear power reactors of the amount needed to be collected by taking into account the kind of reactor, its location and other considerations in relation to the generic research and other costs associated with power reactor regulation. Under the revised rule, those who require the larger expenditure of NRC resources will pay the larger fees.

II. Responses to Comments

The Commission received thirty-two (32) letters commenting on the proposed rule. Twenty letters were from persons mainly concerned with Part 50 facilities and twelve commented on fees for materials licenses.

The comments fell into the following categories:

Part 170 Comments:

1. Removal of ceilings.
2. Removal of routine inspection frequencies.
3. Fees for standardized design review.
4. Disparity in certain materials fee categories.

Part 171 Comments:

1. Legality of fees.
2. Allocate costs to all persons.
3. Exclude costs serving an independent public benefit.
4. Base fees on specific identifiable services.
5. Exclude research until NRC acts on that research.

6. Include fines, penalties, and interest in fee collections.

7. Other Comments.

The Commission's responses to the comments are as follows:

Comments on Part 170

1. Removal of ceilings for reactor and major fuel cycle permits, licenses, amendments, reactor related topical reports and services; and for transportation cask packages and shipping containers. Commenters' main concern about the removal of ceilings for applications and other services is that it removes the predictability of costs for budgeting purposes. In the area of topical reports, commenters were concerned that it would discourage participation in the topical report program as well as defeat the overall objective of encouraging new and improved predictive models and products.

Response: Ceilings are being removed because the Commission strongly supports the concept that those requiring the greatest expenditure of NRC resources should pay the greatest fees. Ceilings contradict that objective. Appendices A and B that were included in the proposed rule of June 27, 1988 (53 FR 24092 and 24093), are non-binding schedules of estimated fees which may still be used for planning purposes in the absence of ceilings and provide adequate information for planning purposes. The upper range in these

schedules would only be increased slightly for FY 1989 as a result of using FY 1989 budget costs which changed the hourly rate from \$80 (based on FY 1988 budget) to \$86 for FY 1989. With respect to topical report reviews, the Commission finds no compelling argument to justify retaining a ceiling since those who request reviews of topical reports that require considerable staff work should bear their share of the review costs. The Commission recognizes, however, that there may be some topical reports that are of particular importance and use to the NRC. Therefore, as a matter of agency policy, the NRC may, upon its own initiative or at the request of the applicant, exempt all or part of the topical report fee pursuant to § 170.11(b)(1).

2. Removal of routine inspection frequency. Most materials commenters are concerned that the removal of the frequency for routine inspections will take away their ability to predict what they should budget for inspection fees and create a potential for more frequent inspections than are needed.

Response: The Commission's routine inspection program is a structured program to assure that licensees comply with their license conditions and Commission regulations and standards to the extent that the health and safety of the company employees and public are not endangered. As long as a licensee's operations are in compliance with the NRC-issued license, regulations, and standards, the frequency of inspections is not generally expected to be more frequent than what was stipulated in the previous regulation. Therefore, from a budgeting standpoint, if a licensee operates in conformance with its license and the Commission's regulations and standards, the predictability for

inspection fee budget costs remains essentially unchanged and the NRC does not anticipate that there will be more frequent routine inspections.

3. Fees for standardized design. Nuclear power industry commenters questioned the Commission's proposal to defer fees for review of standardized reference designs until referenced by an applicant, or at the end of 5 years (10 years if a design is certified) after design approval, whichever comes first. A few commenters felt that fees should not be charged or should be waived for standardized design reviews to remove any disincentive for the standardization program and what could possibly be unusually extensive costs as a result of the review being a "first-of-a-kind" that might require extensive safety reviews.

Response: The Commission's decision to defer fees for standard reference design reviews is based upon a balancing of policy considerations. On the one hand, it is clearly the policy of the Government, and the intent of the Congress, that the Commission collect fees for services rendered to applicants. Thus, standard reference design reviews are not to be performed free of charge. On the other hand, there is a sound and persuasive public policy need to avoid a disincentive to the submittal of standard designs by vendors incorporating the best safety features available for a future generation of reactors. For years, the Commission has supported the use of standard designs. See e.g., 10 CFR Part 50, Appendix O, and 10 CFR 2.110. On balance, the Commission believes that the deferral of fees for standard design reviews is a reasonable compromise that serves the public interest. Accordingly, the

Commission will retain its proposed treatment of fees for standard reference designs.

4. Disparity in certain materials fee categories. Two materials licensees questioned why the license and inspection fees in certain areas are higher when compared with other areas.

Response: The NRC recognizes that a part of the current Part 170 fee schedule for materials licenses is outdated and needs revision. For example, the labor rates (staff hours and fees applied) used in calculating fees are based on data that is several years old. The NRC has determined that this is not the appropriate rulemaking to make the necessary adjustments. The NRC contemplates initiating a rulemaking on this issue next year.

Part 171 Comments

The Commission notes that the rulemaking to which the following comments are again addressed is of a very limited scope with respect to Part 171. The rulemaking adds two new definitions to which no comments were addressed, it changes the percent of recovery from 33 percent of the Commission's budget to at least 45 percent, enters a more refined allocation of the annual fee among different classes of power reactors, and eliminates the provision for refunds of collections in excess of 45 percent. The Commission received some comments

that go beyond these limited subjects and are therefore not relevant to this rulemaking. Nonetheless, the Commission is responding to them. The response to comments beyond the scope of the rulemaking should not, however, be taken as an admission by the Commission that the issues raised are again open to challenge. Responses to these comments are seen as a matter of courtesy to the commenters, and not as reopening these issues to further litigation. These comments and the responses thereto are:

1. Legality of Fees. Several commenters, in particular law firms representing operators of nuclear power reactors, commented on issues of a legal nature.

Response. These comments for the most part repeated comments addressed to the first issuance of 10 CFR Part 171 (final rule issued September 18, 1986, 51 FR 33224) promulgated to implement Section 7601 of the Consolidated Omnibus Budget Reconciliation Act of 1985. That rule was challenged and upheld in its entirety in *Florida Power & Light Co. et al. v. United States*, 846 F.2d 765 (D.C.Cir. 1988). A petition for writ of certiorari challenging that decision is pending in the Supreme Court (*Florida Power & Light Co. v. United States*, No. 88-234).

2. Allocation of costs. Some commenters stated that annual fees should be levied on all persons such as materials licensees receiving services from the Commission.

Response. Congress provided the Commission with the discretion to determine which categories of licensees or other persons should be charged an annual fee by the Commission. The Commission's decision not to charge materials licensees annual fees was upheld in *Florida Power & Light v. United States*, supra. The Commission has reaffirmed its determination that it will not impose an annual fee on its materials licensees. The Commission has more than 9000 materials licensees. Regulation of these entities requires a minimal expenditure of NRC resources (less than 3 percent of the NRC budget). Moreover, these licensees are an extremely varied class, ranging from large uranium processing operators to small operators involving well logging, radiography, or the use of gauging devices. In light of the relatively minor resources devoted to regulating these entities and the obvious administrative difficulties in determining how to calculate appropriate annual fees for this large, diverse class of licensees, the Commission will not impose an annual fee on these licensees.

3. Some commenters asserted that the cost basis for annual fees should exclude costs serving an independent public benefit.

Response. The concept that costs related to an independent public benefit should not be charged to licensees derives from the case law on application of the Independent Offices Appropriation Act of 1952, 31 U.S.C. 9701 (IOAA). It is not a concept applicable to annual fees charged under COBRA, as

amended. The annual fee statute has its own standard independent of the standards applicable to IOAA. In any case, the research performed by the NRC primarily benefits power reactor licensees as part of the system under which those facilities are regulated and allowed to operate in a manner that provides adequate protection to the public health and safety. Therefore, none of the services for which fees are charged provide "independent public benefits" even if this concept were deemed applicable. The Commission's position on this issue was also upheld in *Florida Power & Light v. United States*, supra.

4. Some commenters took the position that fees should be based on specific identifiable services benefitting individual licensees and not on generic agency action.

Response. The concept that fees should be levied only for specific services to identifiable recipients is an IOAA standard. It is not a standard that applies to annual fees under COBRA, as amended. It is the Commission's continuing view that the Congress did not intend that IOAA principles be applied to the collection of annual fees under COBRA, as amended. The Commission's determinations in this area were upheld in *Florida Power & Light v. United States*, supra.

5. Some commenters stated that the Commission should not include in its cost basis for annual fees research cost until the Commission acts upon that research and it is shown to provide a benefit.

Response. It is the position of the Commission that research devoted to the continued safety of nuclear power reactors is a present service and benefit. This research either confirms that reactors are safe, that some changes will improve safety, or that certain regulations may no longer be necessary for safe operation. The conduct of research resulting in any of these outcomes is a present benefit. This research provides continuing confidence that licensed reactors can be operated consistent with the public health and safety and the Commission's regulations. We again note that the DC Court in *Florida Power & Light v. United States*, supra, upheld the Commission's decision to include such costs in its annual fee base.

6. One commenter felt that monies from the collection of fines, penalties and interest should be included in the 45 percent required to be collected.

Response. Although related here to the 45 percent level of collection, the same comment was presented with respect to the rule promulgating the 33 percent ceiling. The Commission adheres to its prior position. Fines, penalties and interest are not cost recovery measures, but are disciplinary and intended to deter and punish persons who violate Commission regulations and orders. Public policy dictates that those paying penalties, fines, or interest should not benefit by recovering a portion of the penalty, fine or interest through a reduced fee. Again, this Commission decision was upheld in *Florida Power & Light v. United States*, supra.

7. Other Comments on Part 171 Amendments.

a. Some licensees and their vendors have stated that the additional costs assessed for B&W type reactors are not justified because these plants are not problem plants requiring the greatest expenditure of staff funds and manpower when compared with other reactors.

Response. The basis for assessing B&W owners under Part 171, or any licensee (by vendor type), is not based upon performance, but it is an allocation of fee based upon corresponding costs (FTE and obligations) to the NRC to perform generic type activities associated with that type of reactor (vendor type). Some specific activities questioned (i.e., "Continuing Experimental Capability" and "Technical Integration Center") have been reallocated based upon a more detailed identification matrix of licensee groups.

b. Florida Power Corporation commented that Agency and industry research supports exclusion of reactors east of the Rockies from the list of reactors benefitting from special seismic studies.

Response. Although its service area lies within a region of low seismicity, the Florida Power Corporation, as explained below, benefits substantially from NRC seismic research, including maintenance of the NRC-funded seismograph networks east of the Rocky Mountains. Seismic research through the years has shown that Florida is less prone to earthquakes than a large part of

the eastern and central U.S., and thus allows for less stringent seismic design bases for critical facilities. Ongoing seismic monitoring will continue to confirm that conclusion or identify possible errors of judgment.

Recent experience (1982 New Brunswick and New Hampshire earthquakes, the 1987 southern Illinois Earthquake and the reservoir induced seismicity at Monticello Reservoir, South Carolina) indicates that high accelerations at relatively high frequencies can be generated locally by moderate to small magnitude earthquakes, usually at relatively shallow depths (several kilometers). It is possible that earthquakes of these sizes could occur in Florida (although the probability is low). Accelerations can result that exceed OBE or SSE design bases for critical facilities. We do not believe that such ground motions (short duration, high accelerations at high frequencies) are the kind that result in damage to seismically designed critical facilities, but research in this area is ongoing. Such occurrences are extremely difficult to handle even with no evidence of damage. The seismic networks are the main sources of data that are basic to resolving this issue.

Another major issue regarding eastern U.S. seismicity is the nature of the tectonic structures that are currently responsible for the earthquakes. Suspect structures include faults in rocks ranging in age from Paleozoic through Triassic and into Tertiary (several hundred million years old to several million years old). These faults are widely distributed in rocks throughout the east, including rocks beneath Florida. Much of current seismic

and geologic research funded by the NRC is focused on identifying and defining the tectonic structures that are causing the earthquakes. The most definitive information about seismic sources, which are deeply buried, is obtained from the analysis of recordings of earthquake ground motions. Builders and operators of critical facilities in low seismic areas derive as much benefit from this type of research as those in more seismic areas in view of the relatively short historic seismic record.

c. Level of budget detail. Several utilities' overall criticism of the proposed rule concerns their perception of the need to breakout budgeted obligations to a level lower than the Program - Program Element - Activity structure used in the NRC planning process in the area of research. These utilities further comment on the fact that the budget detail, maintained at the activity level and provided to the Public Document Room (PDR) does not allow them access to greater detail (to see if the NRC developed its budget, thus its user charges, accurately).

Response. This suggestion has been adopted. We have gone one level below the activity level to the project level (FIN) in developing fees for research activities. Using the FIN level permits a more detailed breakout of fee categories. However, FIN information used in developing these fees cannot be placed in the PDR now because it contains predecisional contracting information--amounts set aside for specific procurements that have not yet been awarded. To release this information before contracts are awarded would be in violation of the Federal Procurement Law. Accordingly, we do not

envision placing the FIN data used in developing this fee schedule in the PDR until sometime during the following fiscal year.

d. MIST program costs. Several commenters stated that the Commission agreed to share in the funding of Multi-Loop Integral System Test (MIST), the program with the B&W Owners Group (OG). However, it is in the research costs set forth in Table IV of the proposed rule. It is inappropriate for NRC to pass its share of the MIST costs on to B&W Owners through license fees.

Response. The NRC does provide funding for the MIST program as well as other cooperative programs. Being an agency cost item, the MIST program as well as the costs for all other current and future cooperative programs should be used in the cost allocation data base. Moreover, we do not view this as a breach of the co-funding agreement by NRC with the OG because the current agreement is about to expire and a new agreement is being negotiated. All of the \$2.7 million included in the user fee base is for activities that would be funded by the new agreement rather than the existing one. Before entering the new agreement, this final rule will have been promulgated putting the OG on notice of the agency's revised user fee policies.

It should also be pointed out that in the past two phases of MIST co-op research (Phase 3 and Phase 4), the owners group paid only about one-half of the NRC contributions for Phase 3 and did not contribute any funds for Phase 4. Since almost 90 percent of all funds budgeted in areas subject to fee recovery under Part 171 will be collected through user fees, if co-op research programs

were exempt from the fee base, the co-op groups would receive fee exemptions not available for other research--inequitably shifting the fee burden to other licensees.

e. Comments on specific changes to Part 171. Comments on the proposed changes to Part 171 fall into three primary groups: (1) the Commission is in error in considering the 45 percent collection target as a floor, and not as a ceiling, (2) the Commission is in error in eliminating the provision for refunds of excess annual fee collections (§ 171.21), and (3) the Commission should adopt option 2 identified in the notice of proposed rulemaking. Under that option, the previously adopted method for calculating annual fees would be retained. The only significant change would be raising the annual fee to collect 45 percent of the NRC budget. Other commenters suggested that Option 2 not be adopted.

Response. The Commission addressed all three of these issues in its notice of interim rule published August 12, 1988, in the Federal Register (53 FR 30423). There the Commission stated its view that reading the 45 percent in Omnibus Budget Reconciliation Act (OBRA) (amending COBRA) as a ceiling would be contrary to the language and plain meaning of the statute, quoting, ". . .in no event shall such percentage be less than a total of 45 percent of such costs in each such fiscal year." (Section 5601, Omnibus Budget Reconciliation Act of 1987.) The Commission adheres to that view again emphasizing that fees will exceed the 45 percent target by a trivial amount.

The elimination of the provision for refunds results from the Commission's view of the operative effect of the 45 percent constituting a floor for collections. In presenting the 45 percent as a floor, and not a ceiling, OBRA removed the necessity to make refunds which was implicit in COBRA when the latter imposed a 33 percent ceiling prior to its amendment. In short, the change in the law from a 33 percent ceiling to a 45 percent floor for collections eliminates the need to make a refund of amounts collected in excess of 45 percent. Accordingly, consistent with its view of Congressional intent, the Commission is permanently removing § 171.21 from its regulations.

With respect to the suggestion that option 2 be adopted and the fee collection methodology remain unchanged, the Commission does not support this approach. The Commission is firmly committed to assessing fees based on the principle that those licensees requiring the greatest expenditure of NRC resources pay the greatest fees. Option 2 is contrary to this policy.

f. One commenter requested that consideration of the utility's rate base be included among the exemption criteria in 10 CFR 171.11.

Response. This comment is also outside the scope of the rulemaking because the rulemaking does not propose any change to the exemption criteria in Part 171. Nonetheless, the Commission believes that factors related to a utility's rate base may be considered in passing on requests for exemptions in § 171.11. Rate base matters may be considered under § 171.11(c) and under

§ 171.11(e). In the Commission's view, the commenter's request is already accommodated in Part 171 as initially codified.

III. Changes Included in the Final Rules

The changes included in the final rule are as follows and permit the NRC to recover approximately, but not less than, 45 percent of its budgeted costs for fiscal years 1988 and 1989, respectively. These changes were set forth in the proposed rule published on June 27, 1988 (53 FR 24077). Any differences between the final rule and the proposed rule are explained in the following discussion.

1. Changing the hourly rates under 10 CFR 170.20 which range from \$53 to \$62 for the various program offices to \$86 for all program offices based on the FY 1989 budget and providing for an annual adjustment if there is a need for increase or decrease. The \$86 hourly rate is an increase from the proposed \$80 hourly rate. This increase is as a result of using the FY 1989 budget in lieu of the FY 1988 budget. The method used for calculating the hourly rate is exactly the same as that used in the proposed rule. An analysis of the budget which generated this rate is provided in the Part 171 Section-by-Section Analysis.

2. Removing the 10 CFR Part 170 fee ceilings for application reviews, services, and inspections for reactors; fuel cycle facilities; transportation cask packages and shipping containers.

3. Amending 10 CFR 170.31 to charge for each routine inspection conducted by the NRC and to delete the maximum billing frequency. For user convenience, the fee schedule previously included in 10 CFR 170.32 has been incorporated in 10 CFR 170.31.

4. In 10 CFR Part 170, removing the application fee and deferring the payment of costs for the review of applications for standardized reactor design reviews and certifications until a standardized design is referenced.

5. In 10 CFR Part 170, removing application filing fees for reactor applications and for reactor related topical reports.

6. Increasing the annual fees assessed under 10 CFR Part 171 and charging based on the principle that licensees requiring the greatest expenditure of NRC resources shall pay the greatest fee. Again, as in the development of the hourly rate, the method used for determining the annual fee is the same as that described in the proposed rule except that budget obligations have been identified one level below the detail shown in the proposed rule based on the comments received, and FY 1989 budget data have been used in lieu of the FY 1988 data used in the proposed rule.

7. Including in the NRC collection, moneys recovered from the Nuclear Waste Fund, as managed by the Department of Energy under the Nuclear Waste Policy Act, as amended, for costs incurred by the NRC in preparing for licensing a high-level waste repository.

The agency workpapers which support the changes to 10 CFR Parts 170 and 171 are available in the Public Document Room, at 2120 L Street, N.W., Washington, DC, in the lower level of the Gelman Building.

IV. Section-by-Section Analysis

The following section-by-section analysis of the affected sections provides additional explanatory information. All references are to Title 10, Chapter I, Code of Federal Regulations.

Part 170

Section 170.12 Payment of fees.

Paragraphs (c), (d), (e), and (f) are changed to remove the \$150 application fee for reactor license amendments and other approvals.

Within paragraph (e), Approval fees, the current reference to facility standard reference design approvals is changed to remove the application fee and to permit deferral of review and certification fees until the design is referenced, payable thereafter in 20 percent increments as the design is referenced. However, regardless of whether the design is referenced, the full costs of a preliminary design approval (PDA)/final design approval (FDA) will be recovered by the NRC from the holder of the design approval within 5 years from the date of approval. If the design is certified, the five-year period is

extended to 10 years from the date of the design certification with the same proviso that 20 percent of the costs will be payable each time the design is referenced. In the event the standardized design approval application is denied, withdrawn, suspended, or action on the application is postponed, fees will be collected when the review, to that point, is completed and the five (5) installment payment procedure will not apply.

Section 170.20 Average cost per professional staff-hour.

This section is modified to reflect an agency-wide professional staff-hour rate based on the FY 1989 budget. The section is also modified to reflect that the hourly rate will be adjusted each fiscal year, with notice of the new rate published in the Federal Register if the hourly rate increases or decreases. Accordingly, the professional staff rate for the NRC for FY 1989 is \$86 per hour, or \$150.9 thousand per FTE (professional staff year) rather than \$80 per hour as set forth in the proposed rule. An analysis of the budget which generated this rate is provided in the Part 171 section-by-section analysis. In each subsequent year, the hourly rate will be adjusted to reflect current cost per direct staff FTE.

On August 19, 1987, Part 170 and other regulations under Title 10 of the Code of Federal Regulations were amended to reflect NRC organizational changes. These revisions as published August 21, 1987 (52 FR 31601), in final form, inadvertently changed 10 CFR 170.20 to delete the \$53 hourly rate for regional staff inspection and other identifiable services. In computing costs for

invoices, the \$53 hourly rate will continue to be used for regional review staff time until the effective date of this final rule at which time the \$86 hourly rate will be used.

Section 170.21 Schedule of fees for production and utilization facilities, review of standard reference design approvals, special projects, and inspections.

Within the schedule of fees, all services (other than most application filing fees) will be changed from the current specified cost to "Full Cost." The schedule for Standard Reference Design Review is modified to reflect the amendment of § 170.12 addressed above.

With the removal of ceilings for certain services, the costs for those reviews for which a ceiling previously established has been reached will not be billed if prior to the effective date of this rule the review of the application is completed. For administrative reasons, where the review has not yet been completed, NRC will not seek to recover those costs which it incurred after the current ceiling was reached and before this revised rule becomes effective. Costs incurred after the effective date of this final rule will be billed. The professional staff-hours expended up to the effective date of this rule will be at the professional rates established for the June 20, 1984 rule. Any professional hours expended after the effective date of this rule will be assessed at the FY 1989 rates reflected in this final rule. The same applies to the removal of ceilings under the revisions of § 170.31 below. The

footnotes to this schedule also are modified to bring them into conformity with the amendments to this schedule.

Section 170.31 Schedule of fees for materials licenses and other regulatory services.

Like § 170.21, this section is modified to (a) reflect the removal of ceilings on certain categories of fees, (b) charge full costs for those services, and (c) incorporate the inspection fee schedule previously set forth in Section 170.32.

Inspection fee ceilings for selected services are also removed and the remaining fixed fees are retained since the ratio of NRC costs to fees collected is approximately equivalent to the percentage of the budget to be collected into the General Treasury. Currently if the frequency of inspection, for example, for a category is 2 years and an inspection is next conducted 1 year and 11 months after the previous inspection, no fee is assessed. Often times inspections of different licensees are scheduled because of their close proximity. This scheduling represents a more efficient use of resources. Accordingly, § 170.31 and the footnotes are being revised to indicate that fees will be assessed for each inspection conducted by the NRC. Footnotes to the schedule that are affected by this action are revised to be consistent with this revision. Previous inspection footnotes 1 through 4 are now being combined as one footnote and will become 1(e) and footnote 5 remains as 5.

Section 170.32 Schedule of fees for health, safety, and safeguards
inspections for materials licenses.

Under the proposed rule, Section 170.32 was published as a separate schedule to cover inspection fees for materials licensees. The reformatting to include materials inspection fees under Section 170.31 is for user convenience and to shorten the rule. By doing this, as in Section 170.21, all fees for each license category are now together rather than in two different schedules. The rule has not been changed from its proposed form. Footnotes have been consolidated and renumbered as specified above.

Part 171

The following is a section-by-section analysis of those areas affected by this final rule. All references are to Title 10, Chapter I, Code of Federal Regulations.

Section 171.5 Definitions.

The following definitions are being added.

The term "Budgeted obligations" is defined to be the projected obligations of the NRC that likely will result in payments by the NRC during the same or a future fiscal year to provide regulatory services to licensees. Budgeted obligations include, but are not limited to amounts of orders to be placed,

contracts to be awarded, and services to be provided to licensees. Fees billed to licensees are based on budgeted obligations because the NRC's annual budget is prepared on an obligation basis.

The term "Overhead costs" is defined to include three components: (1) Government benefits for each employee such as leave and holidays, retirement and disability costs, health and life insurance costs, and social security costs; (2) Travel costs; (3) Direct overhead, e.g., supervision, program support staff, etc.; and (4) Indirect costs, e.g., funding and staff for administrative support activities. Factors have been developed for these overhead costs which are applied to hourly rates developed for employees providing the regulatory services within the categories and activities applicable to specified types or classes of reactors. The Commission views these costs as being reasonably related to the regulatory services provided to the licensees and, therefore, within the meaning of Section 7601, COBRA.

Section 171.13 Notice.

Under the current rule, one fee is applicable to all licensed reactors. Under this final rule, each reactor will be assessed fees based on those NRC activities from which it benefits as a type or within a class of reactors. Accordingly, annual fees are expected to be different for each of the various types or classes of reactor operating licenses. Each bill will reflect those specific activities applicable to each operating license as required by the revised § 171.15 discussed below.

Section 171.15 Annual Fee: Power reactor operating licenses.

Paragraph (c) is modified to reflect a minimum target percentage of 45 percent rather than a maximum percentage of 33 percent. The formula used to calculate the annual fee is modified to reflect the inclusion of moneys expected to be collected from the Nuclear High Level Waste (HLW) Fund administered by the Department of Energy and the estimated collections under Part 170 for each fiscal year. Funds will be collected from the Nuclear HLW Fund beginning in FY 1989. The sum of these funds will be subtracted from the amount reflecting 45 percent of the NRC budget prior to determining the annual fee for each licensed power reactor.

In FY 1989, the Commission must recover not less than 45 percent of its congressionally enacted budget of \$420,000,000. Applying the fee rates set out in this rule, the NRC estimates that it will collect in FY 1989 \$50 million pursuant to Part 170 and \$15 million from the Nuclear Waste fund. In accordance with the formula provided in § 171.15, for FY 1989: \$189 million minus approximately \$50 million for Part 170 plus \$15 million for Nuclear Waste Fund equals approximately \$124 million to be recovered through annual fees. Because at least 45 percent is to be collected, the amount charged under Part 171 will also be dependent on the number of exemptions granted pursuant to § 171.11 and the number of new power reactor licenses issued during the fiscal year.

The following areas are those NRC programs which comprise the annual fee. They have been expressed in terms of the NRC's FY 1989 budget program elements and associated activities in lieu of the FY 1988 activities used in the proposed rule.

<u>PROGRAM ELEMENT</u>	<u>ACTIVITY</u>
-Reactor Performance Evaluation	-Generic Communications -Engineering/Safety Assessments
-Reactor Maintenance and Surveillance	-Maintenance and Surveillance
-License Performance Evaluation	-Quality Assurance
-License and Examine Reactor Operators	-Program Development and Assessment/ Regional Oversight -Generic Activities
-Region-Based Inspections	-Lab and Technical Support -Regional Assessment
-Specialized Inspections	-Vendor Inspections
-Regulatory Improvements	-Technical Specifications -Safety Goal Implementation -Inspection/Licensing Integration and Research and Standards Coordination
-Licensee Reactor Accident Management Evaluation	-Concept of Operations and Implementing Technical Procedures -Regional Assistance Committees
-Safeguards Licensing and Inspection	-Regulatory Effectiveness Reviews
-Reactor Vessel and Piping Integrity	-Pressure Vessel Safety -Piping Integrity -Inspection Procedures and Techniques -Chemical Effects

PROGRAM ELEMENT

ACTIVITY

-Aging of Reactor Components	-Aging Research
-Reactor Equipment Qualification	-Equipment Qualification Methods
-Seismic and Fire Protection Research	-Earth Sciences -Component Response to Earthquakes -Validation of Seismic Analysis -Seismic Design Margin Methods
-Accident Management	-Individual Plant Examinations -Ex-Vessel Accident Management -In-Vessel Accident Management -External Event Safety Margins
-Reactor Applications	-Containment/Balance of Plant -Technical Support Center -Nuclear Plant Analyzer/Database/Simulator
-Plant Performance	-B&W Testing -PWR Large Break LOCA Testing -PWR Small Break LOCA Testing -Other Experimental Programs -Modeling
-Human Performance	-Human Factors Research -Human Error Data Collection and Analysis
-Reliability of Reactor Systems	-Performance Indicators -Plant and Systems Risk and Reliability -Dependent Failure Analysis
-Core Melt and Reactor Coolant System Failure	-Fission Product Behavior and Chemical Form -Natural Circulation in the Reactor Coolant System
-Reactor Containment Safety	-Core Melt Progression and Hydrogen Generation -Steam Explosion -Core/Concrete Interactions -Direct Containment Heating -Integrated Codes and Applications -Hydrogen Transport and Combustion

PROGRAM ELEMENT

ACTIVITY

-Reactor Accident Risk Analysis	-Severe Accident Management -Risk model development -Risk Uncertainty Methodology -Risk Rebaseline Analyses -Risk-Based Management Methodology
-Severe Accident Program Implementation	-Severe Accident Policy Implementation -Regulatory Application of New Source Terms
-Radiation Protection and Health Effects	-Reduce Uncertainty in Health Risk Estimates -Health Physics Technology Improvements -Dose reduction
-Generic and Unresolved Safety Issues	-Engineering Issues -Reactor System Issues -Human Factors Issues -Severe Accident Issues -Management of Safety Issue Resolution
-Developing and Improving Regulations	-Regulation Development or Modification -Independent Review and Control of Rulemaking -Regulatory Analysis of Regulation -Rules for License Renewal -Safety Guide Implementation
-Performance Indicators	-Manage Performance Indicator Program
-Diagnostic Evaluations	-Conduct Diagnostic Evaluations of Licensee Performance
-Incident Investigation	-Management Incident Investigation Program

<u>PROGRAM ELEMENT</u>	<u>ACTIVITY</u>
-NRC Incident Response	-Emergency Response Data System -Develop and Maintain Response Center Equipment, Procedures and Analytical Tools -Program Coordination and Development -Operations Officers
-Technical Training Center	-PWR/BWR Technology Training
-Operational Data Analysis	-Analysis of Operational Experience -Analysis of Operational Trends and Patterns
-Operational Data Collection and Dissemination	-Collect, Screen and Feed Back Operational Data -Operational and Reliability Data Systems
-Section Supervision	-Section Supervision

Each of these activities is related to providing services to operating nuclear power plants. NRC's efforts in each of these areas contribute to the licensees' continued safe operation of their facilities and therefore are of benefit to them. A broader description of these programs is contained in the NRC's annual budget submission to Congress. See NUREG-1100, Volume 4, "Budget Estimates Fiscal Year 1989" (February 1988).¹ While these activities also

¹ Copies of NUREG-1100, Vol. 4 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street NW., Lower Level of the Gelman Building, Washington, DC.

provide benefits to the public, because they benefit our licensees, these are not "independent public benefits" as that term is used in user fee case law. Accordingly, it is legally permissible to charge licensees for these services.

Paragraph (c) is being revised to reflect that the basis for each annual fee will be the budgeted obligations for activities (regulatory services) applicable to each nuclear power reactor as one of a type or class of reactors, e.g., boiling water reactors or pressurized water reactors. Using this approach, the Commission will, each year, establish the budgeted obligations (including overhead costs) for each activity on a per reactor unit basis, and establish the total costs for those regulatory services provided to each reactor licensed to operate. NRC labor costs attributable to these activities will be determined using the hourly rates established on the basis of an analysis of direct and indirect (overhead as defined herein) staffing costs attributable to the regulatory services provided.

Paragraphs (d) and (e) of the current rule are being deleted as superfluous to the proposed approach to annual fees.

Supplemental Analysis on Annual Fee Determination Under § 171.15

Under current legislation, the NRC is to collect and deposit to the General Fund of the Treasury, an amount to approximate but not be less than 45 percent of its budget. In fiscal year 1989 the President's budget for the NRC

is \$420.0 million. Thus, in FY 1989 the NRC should collect at least \$189 million. In FY 1989, it is estimated that approximately \$50 million will be collected from specific licensees under Part 170, and \$15 million from the Department of Energy High-Level Waste Fund. Thus, the remaining funds, at least \$124 million (\$189 million less \$65 million), will have to be collected under Part 171. A multiplier will be used such that the amount to be collected will be equal to Part 170 collections, plus High-Level Waste Fund collections, plus Part 171 potential collections multiplied by a factor "M," which in FY 1989, will probably be less than one. Thus "M" equals $\frac{124}{148}$ or .84 of the budget base.

For FY 1989, the budgeted obligations by direct program are: (1) Salaries and Benefits, \$184.0 million; (2) Administrative Support, \$70.0 million; (3) Travel, \$12.0 million, and (4) Program Support, \$154.0 million. In FY 1989, 1603.4 FTEs are considered to be in direct support of NRC programs applicable to fees (See Table I). About 337 FTEs are utilized in efforts associated with Part 171, with the remainder being utilized in efforts associated with Part 170, or to be recovered from the DOE Nuclear Waste Fund or other efforts. Of the total 3,180 FTEs, 1,577 FTEs will be considered overhead (supervisory and support) or exempted (due to their program function). Of the 3,180 FTEs, a total of 291 FTEs and the resulting \$23.9 million in support are exempted from the fee base due to the nature of their functions (i.e., enforcement activities and other NRC functions currently exempted by Commission policy).

TABLE I

Allocation of Direct FTEs by Office

<u>Office</u>	<u>Number of Direct FTEs¹</u>
NRR/SP	968.0
RESEARCH	155.0
NMSS	307.2
AEOD	93.0
ASLAP	5.2
ASLBP	17.0
ACRS	25.0
OGC	<u>33.0</u>
	1603.4

¹ Regional employees are counted in the office of the program each supports.

In determining the cost for each direct labor FTE (an FTE whose position/function is such that it can be identified to a specific licensee or class of licensees) whose function, in the NRC's judgment, is necessary to the regulatory process, the following rationale is used:

1. All such direct FTEs are identified by office.

2. NRC plans, budgets, and controls on the following four major categories (see Table II):

- a. Salaries and Benefits.
- b. Administrative Support.
- c. Travel.
- d. Program Support.

3. Program Support, the use of contract or other services for which the NRC pays for support from outside the Commission, is charged to various categories as used.

4. All other costs (i.e., Salaries and Benefits, Travel, and Administrative Support) represent "in-house" costs and are to be collected by allocating them uniformly over the total number of direct FTEs.

Although this method differs from previous methods for recovery of costs, it is equally as accurate because it allocates all "in-house" resource requirements over the universe of direct FTEs (those staff members who would be billed to licensees based upon work performed either directly for a specific licensee or a specific group of licensees).

Using this method which was described in the proposed rule and the FY 1989 budget, and excluding budgeted Program Support obligations, the remaining

TABLE II
FY 1989 Budget By Major Category
(\$ In Millions)

Salaries and Benefits	\$184
Administrative Support	70
Travel	<u>12</u>
Total Non Program Support Obligations	\$266
Program Support	154
Total Budget	<u>\$420</u>

The Direct FTE Productive Hourly Rate (\$86/hour rounded down)) is calculated by dividing the annual nonprogram support costs (\$266 million) less the amount applicable to exempted functions (\$23.9 million) by the product of the direct FTE (1,603.4 FTE) and the number of productive hours in one year (1,744 hours) as indicated in OBM Circular A-76, "Performance of Commercial Activities."

\$242 million allocated uniformly to the direct FTEs (1603.4) results in a calculation of \$150.9 thousand per FTE for FY 1989 (an hourly rate of \$86).

Because Part 171 is designed to collect fees for NRC efforts of a generic or multi-license nature concerning licensees with power reactor operating licenses, the most feasible method to accomplish this is to develop fees based on NRC budgeted obligations for each NRC generic or multi-licensee program concerning plants with operating licenses. Additionally, because many of the research programs expend effort for specific types of reactors (i.e., Westinghouse, CE, B&W, and GE), containment types (i.e. MARK I, II, III, etc.), or plants in a specific geographic location (e.g., reactors east of the Rockies), these parameters were also used in refining NRC cost by

reactor/operating license. Table III presents a summary of Part 171 fees, by reactor category, using the FY 1989 budget for Program Support costs and FTEs.

As can be seen from Table III, a reactor which is a B&W reactor, east of the Rockies would have a fee (\$1,592) imposed which is higher than the fee (\$1,121) imposed on a GE Mark I reactor west of the Rockies. This example also represents the normal range of fees to be charged under Part 171 of \$1,121 thousand to \$1,592 thousand. Table IV provides a detailed presentation of the budgeted obligations by budget program element and activity and shows how the annual fees were determined for the various types of reactors. Table V is a specific listing of the annual fee to be assessed for each reactor in FY 1989.

TABLE III

Part 171 Fees By Reactor Category - Summary

(Fees In Millions)

WITH MINOR ADJUSTMENTS FOR PLANTS WEST OF ROCKIES OR WESTINGHOUSE PLANTS WITH
ICE CONDENSERS THE FOLLOWING APPLY TO PLANT/CONTAINMENT

<u>TYPE</u>	<u>NUMBER</u>	<u>BUDGET BASE X.84</u>	<u>FEE</u>	<u>TOTAL COLLECTED</u>
GE MARK I	(24)	\$1.349	\$1.133	\$ 27.19
GE MARK II	(7)	1.443	1.212	8.48
GE MARK III	(4)	1.373	1.153	4.61
B&W	(8)	1.896	1.592	12.74
CE	(15)	1.391	1.168	17.52
WESTINGHOUSE	<u>(48)</u>	1.352	1.135	<u>54.48</u>
	106			\$125.0

FEE BASIS BY VENDOR/CONTAINMENT TYPE-SUMMARY
(\$000)

ALL GE MARK I's (24)*	\$1,219	(ALL)
	98	(ALL BWR)
	18	(MARK I)
	14	(EAST OF ROCKIES)
	<u>\$1,349</u>	
ALL GE MARK II's (7)*	\$1,219	(ALL)
	98	(ALL BWRs)
	70	(MARK II)
	42	(MARK II/III)
	14	(EAST OF ROCKIES)
	<u>\$1,443</u>	
ALL MARK III's (4)*	\$1,219	(ALL)
	98	(ALL BWR)
	42	(MARK II/III)
	14	(EAST OF ROCKIES)
	<u>\$1,373</u>	

TABLE III (Contd)

ALL B&Ws (8)*	\$1,219	(ALL)
	112	(ALL PWR)
	7	(ALL PWR - LDC)
	544	(ALL B&W)
	14	(EAST OF ROCKIES)
	<u>\$1,896</u>	
ALL CE's (15)	\$1,219	(ALL)
	112	(ALL PWR)
	7	(ALL PWR-LDC)
	39	(ALL CE)
	14	(EAST OF ROCKIES)
	<u>\$1,391</u>	
ALL WESTINGHOUSE (48)*	\$1,219	(ALL)
	112	(ALL PWR)
	7**	(ALL PWR-LDC)
	14	(EAST OF ROCKIES)
	<u>\$1,352</u>	

FEE BASIS BY CATEGORY - SUMMARY
(\$000)

ALL PLANTS (106)	\$1,219
ALL PWRs	112
+ PWRs with LDC	7
+ ALL B&Ws	544
or	
ALL CEs	39
ALL BWRs	98
+ ALL MARK I's	18
+ ALL MARK II's	70
+ ALL MARK II's & III's	42
ALL PLANTS EAST OF ROCKIES (SEISMIC)	14

*All except plants west of Rockies which pay \$14,000 less

** 8 Westinghouse plants with ice condenser are not charged this \$7,000 fee

Table IV
FEE BASIS FOR ALL REACTORS - DETAIL
(\$000)

	<u>PTS\$</u>	<u>FTE\$</u>
<u>GENERIC (ALL REACTORS) (106)</u>		
NRR/SP	\$ 4,092	\$19,949
AEOD	9,255	13,355
RES (ALL)	29,251	8,149
RES (PWRs & BWRs)	36,212	5,915
RES SEISMIC (ALL)	2,603	438
	81,413	47,806
TOTAL		\$129,219
TOTAL	=	\$129,219
NUMBER REACTORS	=	<u>106</u>
		1,219 Per Reactor

FEE BASIS FOR ADDITIONAL
CHARGES BY NUCLEAR STEAM SUPPLY SYSTEM
VENDOR AND CONTAINMENT TYPE - DETAIL

<u>PRESSURIZED WATER REACTORS</u>		PTS\$ (\$000)	FTE\$ (\$000)
<u>NSSS, ALL PWRs (71)</u>		\$6,200	\$1,720
TOTAL - PWRs	=		<u>\$7,920</u>
TOTAL	=	<u>\$7,920</u> 71	= \$111.55 Per Reactor
<u>NSSS (ALL LARGE DRY CONTAINMENT [LDC] PWRs) (63)</u>		\$335	\$105
TOTAL PWR LDCs	=		\$ 440
TOTAL PWR LDCs	=	\$ 440	= \$6.98 Per
NUMBER OF REACTORS	=	63	Reactor
<u>NSSS LDC B&W ONLY (8)</u>		\$3,975	\$ 377
TOTAL LDC - B&Ws			<u>\$4,352</u>
TOTAL LDC - B&Ws	=	<u>\$4,352</u>	= \$544.00 Per
NUMBER OF REACTORS	=	8	Reactor
<u>NSSS, LDC - CE ONLY (15)</u>		\$475	\$105
TOTAL LDC - CEs			<u>\$ 580</u>
TOTAL LDC - CEs	=	\$ 580	= \$ 38.67 Per
		15	Reactor
 <u>BOILING WATER REACTORS</u>			
<u>NSSS, ALL BWRs (35)</u>		\$3,048	\$377
TOTAL - BWRs	=		<u>\$3,425</u>
TOTAL BWRs	=	<u>3,425</u>	= \$97.86 Per
NUMBER OF REACTORS	=	35	Reactor

	PTS\$ (\$000)	FTE\$ (\$000)
NSSS, BWRs (Mark I) (24)	\$ 400	\$30
TOTAL MARK I		<u>\$ 430</u>
TOTAL MARK Is =	\$430	= \$17.92
NUMBER OF REACTORS =	<u>24</u>	Per Reactor
NSSS, BWRs (MARK II) (7)	\$400	\$ 90
TOTAL MARK II		<u>\$490</u>
TOTAL MARK IIIs =	\$ 490	= \$70.00
NUMBER OF REACTORS =	<u>7</u>	Per Reactor
NSSS, BWRs (TOTAL MARK II/MARK III) (7/4)	\$325	\$135
TOTAL MARK II/MARK III S		<u>\$460</u>
TOTAL MARK II/MARK IIIIs =	\$460	= \$41.82
NUMBER OF REACTORS	<u>11</u>	Per Reactor
SEISMIC WORK - ALL PLANTS	\$2,603	\$438
TOTAL SEISMIC - ALL PLANTS		<u>\$3,041</u>
TOTAL SEISMIC ALL PLANTS	= \$3,041	= \$28.69
NUMBER OF REACTORS	= <u>106</u>	Per Reactor
SEISMIC WORK (APPLICABLE PLANTS EAST OF ROCKIES)	\$1,220	\$151
TOTAL EAST OF ROCKIES		<u>\$1,371</u>
TOTAL EAST OF ROCKIES	= \$1,371	= \$14.43
NUMBER OF PLANTS	= <u>95</u>	Per Reactor

TABLE IV (Contd)
DETAIL ELEMENTS

		FY 1989	
		<u>Program Support \$</u>	<u>FTE</u>
<u>Part 171 Work by NRR</u>			
<u>GENERIC EFFORT - ALL PLANTS</u>			
1.	Reactor Performance Evaluation		
a.	Generic Communications	\$ 0	10.5
b.	Engineering/Safety Assessments	387	6.4
2.	Reactor Maintenance and Surveillance	175	2.2
3.	Licensee Performance Evaluation Quality Assurance Program	0	4.5
4.	License and Examine Reactor Operators		
a.	Program Development and Assessment/ Regional Oversight	0	8.1
5.	Region-Based Inspections		
a.	Lab and Technical Support	670	10.6
b.	Regional Assessment	0	0
6.	Specialized Inspections Vendor Inspections	815	15.1
7.	Section Supervision	0	37.3
8.	Regulatory Improvements		
a.	Technical Specifications	345	11.9
b.	Safety Goal Implementation	0	.6
c.	Generic Issues/Rules/Reg. Guides/Policy	150	11.4
9.	Licensee Reactor Accident Management Evaluation		
a.	Emergency Procedures	1,115	5.2
b.	Regional Assistance Committees	0	2.0
10.	Safeguards Licensing and Inspection Regulatory Effectiveness Reviews		
	Total Part 171	435 \$4,092	6.4 132.2
FTE	132.2 X \$150.9	\$19,949	
PTS		4,092	
TOTAL - NRR - (ALL PLANTS)	=	\$24,041	

FY 1989	
<u>Program Support \$</u>	<u>FTE</u>

Part 171 Work by AEOD

GENERIC EFFORT - ALL PLANTS

1. Diagnostic Evaluations	\$ 0	2.0
2. Incident Investigation	50	2.5
3. NRC Incident Response	2,635	27.0
4. Technical Training Center	2,650	22.0
5. Operational Data Analysis	2,020	25.0
6. Performance Indicators	150	4.0
7. Operational Data Collection and Dissemination	<u>1,750</u>	<u>6.0</u>
Total Part 171 Work by AEOD	\$9,255	88.5

FTE = 88.5 X \$150.9 = \$13,355

PTS 9,255

TOTAL - AEOD = (ALL PLANTS) = \$22,610

Part 171 Work by Research

A. Generic Efforts - All Plants

	<u>PTS \$</u> <u>(\$000)</u>	<u>FTE</u>
Aging of Reactor Components Aging Research	6,245	6.7
Reactor Equipment Qualifications - Equipment Qualification Methods	400	.3
Component Response to Earthquakes	2,460	2.6
Validation of Seismic Analysis	1,200	1.0
Seismic Design Margin Methods	350	.7
Prevent Reactor Core Damage	200	.3
o Other Experimental Programs		
o Modeling	50	0
Human Performance -		
o Human Factors Research	3,020	3.8
o Human Error Data Collections and Analysis	936	1.2
Reliability of Reactor System - Performance Indicators	800	1.5
Plant & System Risk & Reliability	1,411	2.4
Dependent Failure Analysis	225	.2
Individual Plant Exams	1,490	1.1
Reactor Containment Structural Integrity	2,970	2.3
Regulatory Application of New Source Terms	25	1.0
Radiation Protection of Health Effects - Reduce Uncertainty in Health Risk Estimates	835	1.8
Health Physics Technology Improvements	415	1.5

	<u>PTS \$</u> <u>(\$000)</u>	<u>FTE</u>
Dose Reduction	825	1.5
Generic and Unresolved Safety Issues	790	6.2
Reactor System Issues	150	1.2
Human Factors Issues	1,000	1.3
Severe Accident Issues	370	1.0
Management of Safety Issues Resolution	300	6.5
Regulation Development and Modification	350	2.9
Regulatory Analysis of Regulations	1,044	3.0
Rule for License Renewal	1,190	1.0
Safety Goal Implementation	200	1.0
	<hr/>	<hr/>
Generic Efforts - All Reactors - TOTAL =	\$29,251	54.0

B. Generic Efforts - All Plants Except HTGR

	<u>PTS \$</u> <u>(\$000)</u>	<u>FTE</u>
Integrity of Reactor Component -		
Reactor Vessel & Piping Integrity -		
Pressure Vessel Safety	8,195	2.6
Piping Integrity	1,385	.5
Inspection Procedures and Techniques	1,280	.9
Chemical Effects	2,050	4.0
Aging of Reactor Components -		
Aging Research	950	1.1
Reactor Equipment Qualification -		
Standards Development	455	.4
Prevent Reactor Core Damage - Modeling	450	.4
Reactor Applications - Containment/Balance of Plant	460	1.0
Technical Support Center	1,050	1.2
NPA/Database/Simulator	400	.8
Accident Management - Ex-Vessel Accident Management	1,050	1.5
In-Vessel Accident Management	1,400	1.5
External Events Safety Margins	325	.4
Core Melt Progression and H2 Generation	3,820	1.8
Natural Circulation in the RCS	690	1.0
Steam Explosions	185	0
Fission Product Behavior and Chemical Form	990	.8
Reactor Containment Safety - Core Concrete Interaction	1,750	.8
Hydrogen Transport and Combustion	650	1.0

	<u>PTS \$</u> <u>(\$000)</u>	<u>FTE</u>
Integrated Codes and Applications	2,762	2.1
Reactor Accident Risk Analysis - Assessment of Plant Risks	300	.5
Risk Model Development, QA and Maintenance	2,025	3.0
Risk Model Applications	2,690	2.0
Severe Accident Policy Implementation	200	.6
Regulatory Application of New Source Term	125	5.0
Generic and Unresolved Safety Issues - Engineering Issues	75	.6
Reactor System Issues	500	3.7
	<hr/>	<hr/>
TOTAL (PWRs & BWRs)	\$36,212	39.2

C. Seismic - All Plants

	<u>PTS \$</u> <u>(\$000)</u>	<u>FTE</u>
Seismic and Fire Protection - Earth Sciences	2,270	1.8
Reactor Accident Risk Analysis - Assessment of Plant Risks	273	.5
Resolve Safety Issues and Developing Regulations - Engineering Issues	60	.6
	<u>2,603</u>	<u>2.9</u>
TOTAL \$3,041k		

D. Seismic - Plants East of Rockies

Seismic and Fire Protection - Earth Sciences	1,220	1.0
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E. Seismic - Plants West of Rockies

TOTAL = \$0	0	0
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F. Nuclear Steam Supply System
(PWR only)

	<u>PTS \$</u> <u>(\$000)</u>	<u>FTE</u>
Integrity of Reactor Component		
Piping Integrity	100	0
Inspection Procedures and Techniques	170	.1
Prevent Reactor Core Damage -		
PWR Large Break LOCA Testing	1,000	.9
PWR Small Break LOCA Testing	300	.4
Modeling	1,700	1.5
Core Melt Progression and H2 Generation	300	.2
Fission Product Behavior and Chemical Form	300	.2
Direct Containment Heating	1,620	1.0
Resolving Safety Issues and Developing	235	2.4
Regulations - Engineering Issues		
Reactor System Issues	475	4.7
	<hr/>	<hr/>
TOTAL NSSS - PWR Only	\$6,200	11.4

G. NSSS - All Large Dry Containments - (PWRs ONLY)

	<u>PTS \$</u> <u>(\$000)</u>	<u>FTE</u>
Severe Accident Implementation -		
Severe Accident Policy Implementation	225	.6
Resolving Safety Issues and		
Developing Regulations - Reactor	110	.1
Systems Issues	<hr/> 335	<hr/> .7

H. NSSS PWR LDC - (Westinghouse only) 0 0

I. NSSS LDC (B&W ONLY)

	<u>PTS \$</u> <u>(\$000)</u>	<u>FTE</u>
Prevent Reactor Core Damage - Plant Performance - B&W Testing	3,500	1.8
Reactor Accident Risk Analysis - Assessment of Plant Risks	475	.7
	<hr/>	<hr/>
	\$3,975	2.5

J. NSSS CE - Large Dry Containments

Reactor Accident Risk Analysis - Assessment Plant Risks	475	.7
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K. NSSS - (BWR Only)

	<u>PTS \$</u> <u>(\$000)</u>	<u>FTE</u>
Integrity of Reactor Component Piping Integrity	1,080	.5
Prevent Reactor Core Damage - Modeling	800	.7
Reactor Containment Safety - Integrated Codes and Applications	1,128	.9
Resolve Safety Issues	40	.4
	<hr/>	<hr/>
	\$ 3,048	2.5

L. GE - MARK I

Reactor Containment Safety - Core/Concrete Interactions	400	.2
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M. GE - MARK II

Reactor Accident Risk Analysis - Assessment of Plant Risks	400	.6
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N. GE - MARK II & III

Severe Accident Implementation - Severe Accident Policy Implementation	325	.9
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The costs to NRC for these programs should be paid for on a prorata basis, by all plants included in the specified categories. By adding the program support costs to the NRC staff cost for each category of effort and prorating these costs over the population (plants) of that category, a fee is established which requires those licensees who require the greatest expenditure of NRC resources to pay the largest annual fee.

TABLE V
ANNUAL FEES FOR OPERATING POWER REACTORS
FY 1989

<u>Westinghouse Reactors</u>	<u>Containment Type</u>	<u>Annual Fee</u>
1. Beaver Valley 1	PWR-Large Dry Containment	\$1,135,000
2. Beaver Valley 2	"	1,135,000
3. Braidwood 1	"	1,135,000
4. Braidwood 2	"	1,135,000
5. Byron 1	"	1,135,000
6. Byron 2	"	1,135,000
7. Callaway 1	"	1,135,000
8. Diablo Canyon 1	"	1,124,000
9. Diablo Canyon 2	"	1,124,000
10. Farley 1	"	1,135,000
11. Farley 2	"	1,135,000
12. Ginna	"	1,135,000
13. Haddam Neck	"	1,135,000
14. Harris 1	"	1,135,000
15. Indian Point 2	"	1,135,000
16. Indian Point 3	"	1,135,000
17. Kewaunee	"	1,135,000
18. Millstone 3	"	1,135,000
19. North Anna 1	"	1,135,000
20. North Anna 2	"	1,135,000
21. Point Beach 1	"	1,135,000
22. Point Beach 2	"	1,135,000
23. Prairie Island 1	"	1,135,000
24. Prairie Island 2	"	1,135,000
25. Robinson 2	"	1,135,000
26. Salem 1	"	1,135,000
27. Salem 2	"	1,135,000
28. San Onofre 1	"	1,124,000
29. Seabrook 1	"	1,135,000
30. South Texas 1	"	1,135,000
31. Summer 1	"	1,135,000
32. Surry 1	"	1,135,000
33. Surry 2	"	1,135,000
34. Trojan	"	1,124,000
35. Turkey Point 3	"	1,135,000
36. Turkey Point 4	"	1,135,000
37. Vogtle 1	"	1,135,000
38. Wolf Creek 1	"	1,135,000
39. Zion 1	"	1,135,000
40. Zion 2	"	1,135,000
41. Catawba 1	PWR-Ice Condenser	1,130,000
42. Catawba 2	"	1,130,000

43.	Cook 1	"	1,130,000
44.	Cook 2	"	1,130,000
45.	McGuire 1	"	1,130,000
46.	McGuire 2	"	1,130,000
47.	Sequoyah 1	"	1,130,000
48.	Sequoyah 2	"	1,130,000

Combustion Engineering
Reactors

	<u>Containment Type</u>	<u>Annual Fee</u>
1.	Arkansas 2	PWR-Large Dry Containment \$1,168,000
2.	Calvert Cliffs 1	" 1,168,000
3.	Calvert Cliffs 2	" 1,168,000
4.	Ft. Calhoun 1	" 1,168,000
5.	Maine Yankee	" 1,168,000
6.	Millstone 2	" 1,168,000
7.	Palisades	" 1,168,000
8.	Palo Verde 1	" 1,157,000
9.	Palo Verde 2	" 1,157,000
10.	Palo Verde 3	" 1,157,000
11.	San Onofre 2	" 1,157,000
12.	San Onofre 3	" 1,157,000
13.	St. Lucie 1	" 1,168,000
14.	St. Lucie 2	" 1,168,000
15.	Waterford 3	" 1,168,000

Babcock & Wilcox Reactors

1.	Arkansas 1	PWR-Large Dry Containment 1,592,000
2.	Crystal River 3	" 1,592,000
3.	Davis Besse 1	" 1,592,000
4.	Oconee 1	" 1,592,000
5.	Oconee 2	" 1,592,000
6.	Oconee 3	" 1,592,000
7.	Rancho Seco 1	" 1,581,000
8.	Three Mile Island 1	" 1,592,000

General Electric Plants

1.	Browns Ferry 1	Mark I 1,133,000
2.	Browns Ferry 2	" 1,133,000
3.	Browns Ferry 3	" 1,133,000
4.	Brunswick 1	" 1,133,000
5.	Brunswick 2	" 1,133,000
6.	Clinton 1	Mark III 1,153,000
7.	Cooper	Mark I 1,133,000

8.	Dresden 2	"	1,133,000
9.	Dresden 3	"	1,133,000
10.	Duane Arnold	"	1,133,000
11.	Fermi 2	"	1,133,000
12.	Fitzpatrick	"	1,133,000
13.	Grand Gulf 1	Mark III	1,153,000
14.	Hatch 1	Mark I	1,133,000
15.	Hatch 2	"	1,133,000
16.	Hope Creek 1	"	1,133,000
17.	LaSalle 1	Mark II	1,212,000
18.	LaSalle 2	Mark II	1,212,000
19.	Limerick 1	"	1,212,000
20.	Millstone 1	Mark I	1,133,000
21.	Monticello	"	1,133,000
22.	Nine Mile Point 1	"	1,133,000
23.	Nine Mile Point 2	Mark II	1,212,000
24.	Oyster Creek	Mark I	1,133,000
25.	Peach Bottom 2	"	1,133,000
26.	Peach Bottom 3	"	1,133,000
27.	Perry 1	Mark III	1,133,000
28.	Pilgrim 1	Mark I	1,133,000
29.	Quad Cities 1	"	1,133,000
30.	Quad Cities 2	"	1,133,000
31.	River Bend 1	Mark III	1,153,000
32.	Susquehanna 1	Mark II	1,212,000
33.	Susquehanna 2	"	1,212,000
34.	Vermont Yankee	Mark I	1,133,000
35.	Washington Nuclear 2	Mark II	1,200,000

Other Reactors¹

1.	Three Mile Island 2	B&W-PWR-Dry Containment	1,592,000
2.	Shoreham	GE-Mark II	1,212,000
3.	Big Rock Point	GE-Dry Containment	1,118,000
4.	Yankee Rowe	Westinghouse-PWR-Dry Containment	1,135,000
5.	Ft. St. Vrain	High Temperature Gas Cooled	822,000

¹ These licensed reactors have not been included in the fee base since historically they have been granted either full or partial exemptions from the annual fees. The fees shown for these reactors are those fees for the particular type of reactor, no adjustments have been made based on size or particular circumstance of the reactor. Nonetheless, unless full waivers are granted, these licensees will pay at least a portion of the amount specified above.

Section 171.21 Refunds.

This section is being eliminated. Under current legislation, at least 45 percent should be collected. No refunds will be provided, although the fees will be calculated in such a manner as to not greatly exceed the 45 percent floor imposed by the legislation.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

VI. Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

VII. Regulatory Analysis

Section 7601 of COBRA required the NRC, by rule, to establish an annual charge for regulatory services provided to its applicants and licensees, that

when added to other amounts collected, equaled up to 33 percent of Commission costs in providing those services. Section 5601 of the Omnibus Budget Reconciliation Act of 1987 requires that the NRC, for the fiscal years 1988 and 1989, increase the moneys collected pursuant to section 7601 and other authority to at least 45 percent of the Commission's costs. For FY 1988, the NRC issued an interim rule which raised the collection of annual fees to be at least 45 percent of its budget and accordingly raised the annual fee for operating power reactors. For FY 1989 the NRC is revising its fee schedules in 10 CFR Part 170 to remove the fee ceilings on certain categories, to revise its professional hourly rate to reflect inflationary and other increases since FY 1981, to revise the ceiling of 33 percent contained in 10 CFR Part 171 to a target of which approximates but will be at least 45 percent, and to include the collection of moneys from the High Level Waste Fund administered by the Department of Energy.

This final rule revision will not have significant impacts on state and local governments and geographical regions; on health, safety, and the environment; or, create substantial costs to licensees, the NRC, or other Federal agencies. The foregoing discussion constitutes the regulatory analysis for this final rule.

VIII. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact

on a substantial number of small entities. In the notice of proposed rulemaking published on June 27, 1988 (53 FR 24085), the NRC invited any licensee who considered itself to be a small entity subject to this regulation who determines that, because of its size, it is likely to bear a disproportionate adverse economic impact to notify the Commission by providing responses to four general questions. The proposed rule was mailed to approximately 10,000 licensees under 10 CFR Parts 30-35, 39, 40, 50, 60, 61 and 70-73. About 9,000 of these licensees could be considered small entities, particularly in the area of materials licensing under 10 CFR Parts 30-35 and 39. Of the 32 letters of comments received, only twelve were from licensees in the materials category and interest area. Of the twelve, only one licensee addressed the four questions on the impact as a small entity. This commenter was concerned that the removal of ceilings for topical reports, dry storage systems, and transport packages would have a much greater impact on that company than it would on a larger company and place an unfair competitive burden on small entities. It is readily recognized that this final rule will cause some licensees to pay more fees for topical report reviews and other services. However, the financial impact is related to the services provided by the NRC. The size of the licensee is not a factor in the costs imposed. Based upon the number of comments received on the proposed rule and on analysis of these comments, the NRC believes that this rule will not have a significant economic impact upon a substantial number of small entities.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that a backfit analysis is not required for it because the final rule does not impose any new, more stringent safety requirements on Part 50 licensees.

X. List of Subjects

Part 170 - Byproduct material, Nuclear materials, Nuclear power plants and reactors, Penalty, Source material, Special nuclear material.

Part 171 - Annual charges, Nuclear power plants and reactors, Penalty.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 170 and 171.

PART 170 - FEES FOR FACILITIES AND MATERIALS LICENSES AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for Part 170 continues to read as follows:

AUTHORITY: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 170.12, paragraphs (b) through (g) are revised to read as follows:

§ 170.12 Payment of fees.

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(b) License fees. Fees for applications for permits and licenses that are subject to fees based on the full cost of the reviews are payable upon notification by the Commission. Each applicant will be billed at six-month intervals for all accumulated costs for each application the applicant has on file for review by the Commission until the review is completed. Each bill will identify the applications and costs related to each. Fees for applications for materials licenses not subject to full cost recovery must accompany the application when it is filed.

(c) Amendment fees and other required approvals. Fees for applications for license amendments, other required approvals and requests for dismantling, decommissioning and termination of licensed activities that are subject to full cost recovery are payable upon notification by the Commission. Each applicant will be billed at six-month intervals for all accumulated costs for each

application the applicant has on file for review by the Commission, until the review is completed. Each bill will identify the applications and costs related to each. Amendment fees for materials licenses and approvals not subject to full cost reviews must accompany the application when it is filed.

(d) Renewal fees. Fees for applications for renewals that are subject to full cost of the review are payable upon notification by the Commission. Each applicant will be billed at six-month intervals for all accumulated costs on each application that the applicant has on file for review by the Commission until the review is completed. Each bill will identify the applications and the costs related to each. Renewal fees for materials licenses and approvals not subject to full cost reviews must accompany the application when it is filed.

(e) Approval fees. (1) Applications for transportation casks, packages, and shipping container approvals, spent fuel storage facility design approvals, and construction approvals for plutonium fuel processing and fabrication plants must be accompanied by an application fee of \$150.

(2) There is no application fee for standardized design approvals. The review fees for facility reference standardized design approvals and certifications will be paid by the holder of the design approval or certification in five (5) installments based on payment of 20 percent of the application and approval/certification fee (see footnote 4 to § 170.21) as each of the first

five units of the approved/certified design is referenced in an application(s) filed by a utility or utilities. If the design(s) is not referenced or if all costs are not recovered within 5 years after the preliminary design approval (PDA) or the final design approval (FDA), the vendor applicant will pay the costs, or remainder of those costs, at that time. If the design is certified, the five-year deferral period is extended to ten years from the certification with the same proviso that 20 percent of the costs will be payable each time the design is referenced.

(3) Fees for other applications that are subject to full cost reviews are payable upon notification by the Commission. Each applicant will be billed at six-month intervals until the review is completed. Each bill will identify the applications and the costs related to each. Fees for applications for materials approvals that are not subject to full cost recovery must accompany the application when it is filed.

(f) Special project fees. Fees for applications for special projects such as topical reports, are based on full cost of the reviews and are payable upon notification by the Commission. Each applicant will be billed at six-month intervals until the review is completed. Each bill will identify the applications and the costs related to each. All applications filed pursuant to § 170.31 must be accompanied by the \$150 application fee.

(g) Inspection fees. Fees for all routine and non-routine inspections will be assessed on a per inspection basis, and will be billed quarterly if they are based on full cost recovery. Inspection fees for small materials programs are billed upon completion of the inspection. Inspection fees are payable upon notification by the Commission. Inspection costs include preparation time, time on site and documentation time and any associated contractual service costs but exclude the time involved in the processing and issuance of a notice of violation or civil penalty.

* * * * *

3. Section 170.20 is revised to read as follows:

§ 170.20 - Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, Part 55 requalification and replacement examinations and tests, other required approvals and inspections under §§ 170.21, 170.31 and 170.32 will be calculated based upon the full costs for the review using a professional staff rate per hour equivalent to the sum of the average cost to the agency for a professional staff member, including salary and benefits, administrative support and travel. The professional staff rate will be revised on a fiscal year basis using the most current fiscal data available and the revised hourly rate will be

published in the Federal Register for each fiscal year if the rate increases or decreases. The professional staff rate for the NRC for FY 89 is \$86 per hour.

4. Section 170.21 is revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard reference design approvals, special projects, and inspections.

Applicants for construction permits, manufacturing licenses, operating licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES
(See footnotes at end of table)

Facility categories and type of fees	Fees ^{1,2}
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A. Nuclear Power Reactors

Application for Construction Permit	\$125,000
Construction Permit, Operating License	Full Cost
Amendment, Renewal, Dismantling-Decommissioning and Termination, Other Approvals	Full Cost
Inspections ³	Full Cost

B. Standard Reference Design Review⁴

Preliminary Design Approvals, Final Design Approvals, Certification	Full Cost
Amendment, Renewal, Other Approvals	Full Cost

C. Test Facility/Research Reactor/Critical Facility

Application for Construction Permit	\$ 5,000
Construction Permit, Operating License	Full Cost
Amendment, Renewal, Dismantling, Decommissioning and Termination, Other Approvals	Full Cost
Inspections ³	Full Cost

D. Manufacturing License

Application	\$125,000
Preliminary Design Approval, Final Design Approval	Full Cost
Amendment, Renewal, Other Approvals	Full Cost
Inspections ³	Full Cost

E. Uranium Enrichment Plant

Application for Construction Permit	\$125,000
Construction Permit, Operating License	Full Cost
Amendment, Renewal, Other Approvals	Full Cost
Inspections ³	Full Cost

F. Advanced Reactors

Application for Construction Permit	\$125,000
Construction Permit, Operating License	Full Cost
Amendment, Renewal, Other Approvals	Full Cost
Inspections ³	Full Cost

G. Other Production and Utilization Facility

Application for Construction Permit	\$125,000
Construction Permit, Operating License	Full Cost
Amendment, Renewal, Other Approvals	Full Cost
Inspections ³	Full Cost

H. Production or Utilization Facility Permanently Closed Down

Inspections ³	Full Cost
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I. Part 55 Reviews

Requalification and Replacement Examinations for

Reactor Operators	Full Cost
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J. Special Projects

Approvals Full Cost

¹ Fees will not be charged for orders issued by the Commission pursuant to § 2.204 of this chapter nor for amendments resulting specifically from such Commission orders. Fees will be charged for approvals issued pursuant to a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., §§ 50.12, 73.5), and any other sections now or hereafter in effect regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100% of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100% of full rated power, the total costs for the license will be at that decided lower operating power level and not at the 100% capacity.

² All charges will be based on expenditures for professional staff time and appropriate contractual support services. However, in no event will the charges be less than the application fee or, where no application fee is specified, will charges be less than \$150. For those applications currently on file, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the June 20, 1984 rule. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984 rule, but are still pending completion of the review, the costs incurred after the ceiling was reached up to the effective date of this rule will not be billed to the applicant. Any professional hours expended on or after the effective date of this rule will be assessed at the rate established by \$ 170.20. This rate will be reviewed and adjusted annually as necessary to take into consideration increased or decreased costs to the Commission. If such rate increases or decreases in a given fiscal year, the new rate will be published in the Federal Register. In the event a review covers a combination of licensing actions in a one-step licensing process such as a combined construction permit and operating license review (interim, temporary, or other), the fees charged will be the total of the costs for the licensing action.

³ Inspections covered by this schedule are both routine and non-routine safety and safeguards inspections performed by NRC for the purpose of review or followup of a licensed program. Inspections are performed throughout the full term of the license to ensure that the authorized activities are being

conducted in accordance with the Atomic Energy Act of 1954, as amended, other legislation, Commission regulations or orders, and the terms and conditions of the license. Non-routine inspections that result from third-party allegations will not be subject to fees.

⁴ Collection of the review costs for a preliminary design approval (PDA) and final design approval (FDA) are deferred, respectively, for a period of five years from the approval; except that, if the design is referenced during that period, 20 percent of the total costs will be payable by the holder of the design approval or certificate as each reference is made until the full costs are paid. If the design is certified, the five year deferral period is extended to 10 years from the certification, with the same proviso that 20 percent of the costs will be payable each time the design is referenced. In the event the full costs are not recovered by the end of the applicable deferral period, the holder of the design approval or certificate must pay the remainder of any costs not previously recovered by the NRC. Applications for amendments to PDAs, FDAs and certifications are subject to full costs and will be billed upon completion of the review.

5. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections.

Applicants for materials licenses and other regulatory services and holders of materials licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety, and safeguards inspections, where applicable.

SCHEDULE OF MATERIALS FEES

(See footnotes at end of table)

Category of materials licenses and type of fees¹

Fee^{2,3}

1. Special Nuclear Material:

- A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses and to authorize

decommissioning, decontamination, reclamation,
or site restoration activities as well as
licenses authorizing possession only:

Application	\$ 150
License, Renewal, Amendment	Full Cost
Inspections:	
Routine	Full Cost
Nonroutine	Full Cost

- B. Licenses for receipt and storage of spent
fuel at an independent spent fuel storage
installation (ISFSI):

Application	\$ 150
License, Renewal, Amendment	Full Cost
Inspections:	
Routine	Full Cost
Nonroutine	Full Cost

- C. Licenses for possession and use of special
nuclear material in sealed sources contained
in devices used in industrial measuring
systems:⁴

Application - New license	\$ 230
Renewal	\$ 120
Amendment	\$ 60
Inspections:	
Routine	\$ 210
Nonroutine	\$ 640

- D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A:

Application - New license	\$ 350
Renewal	\$ 350
Amendment	\$ 120
Inspections:	
Routine	\$ 320
Nonroutine	\$ 370

2. Source material:

- A. Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, and licenses authorizing decommissioning, reclamation or restoration activities as well as licenses authorizing the possession and maintenance of a facility in a standby mode:

Application	\$ 150
License, Renewal, Amendment	Full Cost
Inspections:	
Routine	Full Cost
Nonroutine	Full Cost

B. Licenses for possession and use of source material for shielding, except as provided for in § 170.11(a)(8):

Application - New license	\$ 60
Renewal	\$ 60
Amendment	\$ 60
Inspections:	
Routine	\$ 130
Nonroutine	\$ 160

C. All other source material licenses:

Application - New license	\$ 350
Renewal	\$ 230
Amendment	\$ 120
Inspections:	
Routine	\$ 370
Nonroutine	\$ 690

3. Byproduct material:

A. Licenses of broad scope for possession and use of byproduct material issued pursuant to

Parts 30 and 33 of this chapter for processing
or manufacturing of items containing byproduct
material for commercial distribution to licensees:

Application - New license	\$1,200
Renewal	\$ 700
Amendment	\$ 120
Inspections: ⁵	
Routine	\$ 950
Nonroutine	\$1,000

B. Other licenses for possession and use of
byproduct material issued pursuant to
Part 30 of this chapter for processing or
manufacturing of items containing byproduct
material for commercial distribution to
licensees:

Application - New license	\$ 460
Renewal	\$ 460
Amendment	\$ 120
Inspections: ⁵	
Routine	\$ 480
Nonroutine	\$ 900

- C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of Part 32 of this chapter authorizing the processing or manufacturing and distribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:

Application - New License	\$1,400
Renewal	\$1,400
Amendment	\$ 230
Inspections:	
Routine	\$ 640
Nonroutine	\$ 850

- D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of Part 32 of this chapter authorizing distribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material:

Application - New License	\$ 700
Renewal	\$ 700
Amendment	\$ 120

Inspections:

Routine	\$ 370
Nonroutine	\$ 530

- E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):

Application - New License	\$ 230
Renewal	\$ 170
Amendment	\$ 120
Inspections:	
Routine	\$ 210
Nonroutine	\$ 320

- F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes:

Application - New License	\$ 580
Renewal	\$ 350
Amendment	\$ 230

Inspections:

Routine	\$ 270
Nonroutine	\$ 580

- G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes:

Application - New License	\$2,300
Renewal	\$ 930
Amendment	\$ 230

Inspections:

Routine	\$ 480
Nonroutine	\$ 640

- H. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been

authorized for distribution to persons exempt
from the licensing requirements of Part 30 of
this chapter:

Application - New License	\$ 580
Renewal	\$ 230
Amendment	\$ 120
Inspections:	
Routine	\$ 320
Nonroutine	\$ 320

- I. Licenses issued pursuant to Subpart A of
Part 32 of this chapter to distribute items
containing byproduct material or quantities
of byproduct material that do not require
device evaluation to persons exempt from
the licensing requirements of Part 30 of
this chapter, except for specific licenses
authorizing redistribution of items that
have been authorized for distribution to
persons exempt from the licensing
requirements of Part 30 of this chapter:

Application - New License	\$ 290
Renewal	\$ 230
Amendment	\$ 60
Inspections:	
Routine	\$ 210
Nonroutine	\$ 320

- J. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:

Application - New License	\$1,200
Renewal	\$ 700
Amendment	\$ 230
Inspections:	
Routine	\$ 320
Nonroutine	\$ 320

- K. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:

Application - New License	\$ 290
Renewal	\$ 230
Amendment	\$ 60
Inspections:	
Routine	\$ 320
Nonroutine	\$ 320

- L. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:

Application - New License	\$1,200
Renewal	\$ 700
Amendment	\$ 120
Inspections:	
Routine	\$ 420
Nonroutine	\$ 530

- M. Other licenses for possession and use of
byproduct material issued pursuant to Part 30
of this chapter for research and development
that do not authorize commercial distribution:

Application - New License	\$ 700
Renewal	\$ 460
Amendment	\$ 120
Inspections:	
Routine	\$ 370
Nonroutine	\$ 420

- N. Licenses that authorize services for other
licensees, except for leak testing and waste
disposal pickup services:

Application - New License	\$ 930
Renewal	\$ 930

Amendment	\$ 120
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Inspections:

Routine	\$ 320
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Nonroutine	\$ 320
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0. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations:

Application - New License	\$ 700
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Renewal	\$ 700
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Amendment	\$ 230
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Inspections:⁵

Routine	\$ 530
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Nonroutine	\$1,200
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- P. All other specific byproduct material licenses, except those in Categories 4A through 9D:

Application - New License	\$ 230
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Renewal	\$ 120
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Amendment	\$ 60
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Inspections:

Routine	\$ 530
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Nonroutine	\$ 530
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4. Waste disposal:

- A. Licenses specifically authorizing the receipt of waste byproduct material, source material or special nuclear material from other persons for the purpose of commercial disposal by land burial by the licensee; or licenses authorizing contingency storage of low level radioactive waste at the site of nuclear power reactors; or licenses for treatment or disposal by incineration, packaging of residues resulting from incineration and transfer of packages to another person authorized to receive or dispose of waste material:

Application	\$ 150
License, renewal, amendment	Full Cost
Inspections:	
Routine	Full Cost
Nonroutine	Full Cost

- B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the

material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:

Application - New License	\$1,400
Renewal	\$ 930
Amendment	\$ 350
Inspections:	
Routine	\$1,000
Nonroutine	\$ 740

- C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:

Application - New License	\$ 930
Renewal	\$ 460
Amendment	\$ 120
Inspections:	
Routine	\$ 740
Nonroutine	\$ 950

5. Well logging:

- A. Licenses specifically authorizing use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:

Application - New License	\$ 700
Renewal	\$ 700
Amendment	\$ 170
Inspections:	
Routine	\$ 370
Nonroutine	\$ 370

- B. Licenses specifically authorizing use of byproduct material for field flooding tracer studies:

Application	\$ 150
License, renewal, amendment	Full Cost
Inspections:	
Routine	\$ 320
Nonroutine	\$ 480

6. Nuclear laundries:

A. Licenses for commercial collection and laundry
of items contaminated with byproduct material,
source material, or special nuclear material:

Application - New License	\$ 700
Renewal	\$ 700
Amendment	\$ 170
Inspections:	
Routine	\$ 530
Nonroutine	\$ 850

7. Human use of byproduct, source, or special nuclear material:

A. Licenses issued pursuant to Parts 30, 35, 40, and
70 of this chapter for human use of byproduct
material, source material, or special nuclear
material in sealed sources contained in teletherapy
devices:

Application - New License	\$ 580
Renewal	\$ 350
Amendment	\$ 230

Inspections:

Routine	\$ 530
Nonroutine	\$ 850

- B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to Parts 30, 33, 35, 40 and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:

Application - New License	\$1,200
Renewal	\$ 700
Amendment	\$ 120
Inspections:	
Routine	\$ 740
Nonroutine	\$ 800

- C. Other licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material,

source material, or special nuclear material in
sealed sources contained in teletherapy devices:

Application - New License	\$ 580
Renewal	\$ 580
Amendment	\$ 120
Inspections:	
Routine	\$ 480
Nonroutine	\$ 690

8. Civil defense:

A. Licenses for possession and use of byproduct
material, source material, or special nuclear
material for civil defense activities:

Application - New License	\$ 290
Renewal	\$ 230
Amendment	\$ 60
Inspections:	
Routine	\$ 320
Nonroutine	\$ 320

9. Device, product or sealed source safety evaluation:

- A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:

Application - each device	\$1,600
Amendment - each device	\$ 580
Inspections	None

- B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by a single applicant, except reactor fuel devices:

Application - each device	\$ 800
Amendment - each device	\$ 290
Inspections	None

- C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:

Application - each source	\$ 350
Amendment - each source	\$ 120
Inspections	None

- D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by a single applicant, except reactor fuel:

Application - each source	\$ 175
Amendment - each source	\$ 60
Inspections	None

10. Transportation of radioactive material:

- A. Evaluation of casks, packages, and shipping containers:

Application	\$ 150
Approval, Renewal, Amendment.....	Full Cost
Inspections	None

- B. Evaluation of Part 71 quality assurance programs:

Application	\$ 150
Approval, Renewal, Amendment.....	Full Cost

Inspections	None
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11. Review of standardized spent fuel facilities:

Application	\$ 150
Approval, amendment	Full Cost
Inspections	None

12. Special projects:

Application	\$ 150
Approval	Full Cost
Inspections	None

1 Types of fees - Separate charges as shown in the schedule will be assessed for applications for new licenses and approvals, issuance of new licenses and approvals, and amendments and renewals to existing licenses and approvals and inspections. The following guidelines apply to these charges:

(a) Application fees - Applications for new materials licenses and approvals or those applications filed in support of expired licenses and

approvals must be accompanied by the prescribed application fee for each category, except that applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(b) License/approval fees - For new licenses and approvals issued in fee Categories 1A and 1B, 2A, 4A, 5B, 10A, 10B, 11 and 12, the recipient shall pay the license or approval fee as determined by the Commission in accordance with § 170.12(b), (e), and (f).

(c) Renewal fees - Applications for renewal of materials licenses and approvals must be accompanied by the prescribed renewal fee for each category, except that applications for renewal of licenses and approvals in fee Categories 1A and 1B, 2A, 4A, 5B, 10A, 10B, and 11 must be accompanied by an application fee of \$150, with the balance due upon notification by the Commission in accordance with the procedures specified in § 170.12(d).

(d) Amendment fees - Applications for amendments must be accompanied by the prescribed amendment fees. An application for an amendment to a license or approval classified in more than one category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply, except that

applications for amendment of licenses in fee Categories 1A and 1B, 2A, 4A, 5B 10A, 10B, 11, and 12 must be accompanied by an application fee of \$150 with the balance due upon notification by the Commission in accordance with § 170.12(c).

An application for amendment to a materials license or approval that would place the license or approval in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for the new category.

An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, shall not be subject to fees.

(e) Inspection fees - Separate charges will be assessed for each routine and nonroutine inspection performed, except that inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations will not be subject to fees. If a licensee holds more than one materials license at a single location, a fee equal to the highest fee category covered by the licenses will be assessed if the inspections are conducted at the same time, except in cases when the inspection fees are based on the full cost to conduct the inspection. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under

§ 170.20 of this part, to which any applicable contractual support service costs incurred will be added. See Footnote 5 for other inspection notes. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g).

² Fees will not be charged for orders issued by the Commission pursuant to § 2.204 of Part 2 nor for amendments resulting specifically from such Commission orders. However, fees will be charged for approvals issued pursuant to a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., §§ 30.11, 40.14, 70.14, 73.5, and any other such sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

³ Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended for review of the application or to conduct the inspection. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rate established for the June 20, 1984 rule. For those applications currently

on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984 rule, but are still pending completion of the review, the cost incurred after the ceiling was reached up to the effective date of this rule will not be billed to the applicant. Any professional hours expended on or after the effective date of this rule will be assessed at the rate established by § 170.20 of this part. In no event will the total review costs be less than the application fee.

⁴ Licensees paying fees under Categories 1A and 1B are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except in those instances in which an application deals only with the sealed sources authorized by the license. Applicants for new licenses or renewal of existing licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the applicable application or renewal fee for fee Category 1C only.

⁵ For a license authorizing shielded radiographic installations or manufacturing installations at more than one address, a separate fee will be assessed for inspection of each location, except that if the multiple installations are inspected during a single visit, a single inspection fee will be assessed.

6. Section 170.32 is revised to read as follows:

§ 170.32 Schedule of Fees For Health and Safety, and Safeguards Inspections
For Materials Licenses

Materials licensees shall pay inspection fees as set forth in § 170.31.

PART 171 - ANNUAL FEE FOR POWER REACTOR OPERATING LICENSES

7. The authority citation for Part 171 is revised to read as follows:

AUTHORITY: Section 7601, Pub. L. 99-272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100-203, 101 Stat. 1330-275 (42 U.S.C. 2213); sec. 301, Pub. L. 92-314, 86 Stat. 222, (42 U.S.C. 2201(w)); sec. 201, 82 Stat. 1242, as amended (42 U.S.C. 5841).

8. In § 171.5, the following definitions are added:

§ 171.5 Definitions

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"Budgeted obligations" means the projected obligations of the NRC that likely will result in payments by the NRC during the same or a future fiscal

year in providing regulatory services to licensees. For this purpose budgeted obligations include, but are not limited to, amounts of orders to be placed, contracts to be awarded, and services to be provided to licensees. Fees billed to licensees are based on budgeted obligations because the NRC's annual budget is prepared on an obligation basis.

* * * * *

"Overhead costs" means (1) the Government benefits for each employee such as leave and holidays, retirement and disability costs, health and life insurance costs, and social security costs; (2) Travel Costs; (3) direct overhead, e.g., supervision, program support staff, etc.; and (4) indirect costs, e.g., funding and staff for administrative support activities. Factors have been developed for these overhead costs which are applied to hourly rates developed for employees providing the regulatory services within the categories and activities applicable to specified types or classes of reactors. The Commission views these costs as being reasonably related to the regulatory services provided to the licensees and, therefore, within the meaning of section 7601, COBRA.

* * * * *

9. In § 171.15 paragraphs (d) and (e) are removed and paragraph (c) is revised to read as follows:

§ 171.15 Annual Fee: Power reactor operating licenses.

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(c) If the basis for the annual fee is greater than 45 percent of the NRC budget, less the sum of moneys estimated to be collected from the High Level Waste (HLW) fund administered by the Department of Energy and the total estimated fees chargeable under Part 170 of this chapter, then the maximum annual fee for each nuclear power reactor that is licensed to operate shall be calculated as follows:

(NRC FY Budget x .45) minus Sum of HLW moneys and estimated Part 170 fees equals fees to be collected under Part 171.

Part 171 fees to be collected on a schedule based on the total from categories shown in the following table:

Part 171 Fees By Reactor Category - Summary
(Fees In Millions)

WITH MINOR ADJUSTMENTS FOR PLANTS WEST OF ROCKIES OR WESTINGHOUSE PLANTS WITH ICE CONDENSERS THE FOLLOWING APPLY TO PLANT/CONTAINMENT

<u>TYPE</u>	<u>NUMBER</u>	<u>BUDGET BASE X.84</u>	<u>FEE</u>	<u>TOTAL COLLECTED</u>
GE MARK I	(24)	\$1.349	\$1.133	\$ 27.19
GE MARK II	(7)	1.443	1.212	8.48
GE MARK III	(4)	1.373	1.153	4.61
B&W	(8)	1.896	1.592	12.74
CE	(15)	1.391	1.168	17.52
WESTINGHOUSE	<u>(48)</u>	1.352	1.135	<u>54.48</u>
	106			\$125.0

§ 171.21 [Removed].

10. Part 171 is amended by removing § 171.21.

Dated at Rockville, Maryland this ____ day of _____, 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission.

Enclosure 2

List and Summaries of Comments

Broken Down By The Following Categories

Group 1 - Reactor Facilities

Group 2 - Materials

Group 3 - States and Federal Agencies

Group 1List of Reactor Facility Licensees and Licensee Representatives
and Summary of Comments

Arkansas Power and Light Company

Babcock and Wilcox Owners Group

Bishop, Cook, Purcell & Reynolds

Boston Edison

Combustion Engineering

Detroit Edison

Duke Power Company

Florida Power Corporation

General Electric Company

Houston Lighting and Power Company

Indiana Michigan Power Company

Newman & Holtzinger P.C.

Public Service Company of Colorado

Sacramento Municipal Utility District

Shaw, Pittman, Potts & Trowbridge

Southern California Edison Company

Toledo Edison

Yankee Atomic Electric Company

Facilities Comments

1. Dan R. Howard, Manager, Licensing

Arkansas Power and Light Company

If the NRC funded portion of a cooperative research program is allocated back to the industry, then the program is not cooperative. If the rule, as proposed, is not altered to address this concern, the future of any cooperative program must be reconsidered in light of the obvious economic implications for the utility.

Under the Part 171 fee breakdown for B&W units the "Continuing Experimental Capability" is listed. This project was to represent a testing/research facility applicable to GE, CE, Westinghouse and B&W reactors. Thus, the costs should be divided accordingly.

2. Walter S. Wilgus, Chairman, Executive Committee

Babcock & Wilcox Owners Group

The proposed rule is based on incorrect assumptions about the resource burden imposed by B&W reactors. Under the proposed fee schedule, the reactor variable fee attributable to B&W reactor owners would be disproportionately higher than the fees attributable to all other types of reactors. The variable fee imposed on B&W plants of \$342,000 per reactor would be over 800 percent greater than the variable fee imposed on Westinghouse plants of

\$42,000 per reactor. The proposed rule appears to reflect a misconception that B&W plants as a group are problem plants and require the greatest expenditure of funds compared to other reactors. This implication is contrary to a decision by the Director, NRR, which denied the Union of Concerned Scientists' 2.206 petition for suspension of B&W owners' operating licenses and construction permits. The Director's decision made clear that B&W reactors generally do not pose significantly greater problems or require significantly more NRC expenditures than other reactor types. Accordingly, fees for B&W reactors should be in line with those of other reactors.

The proposed fees are not reasonably related to the regulatory service provided and do not fairly reflect the cost to the Commission. The Program Support costs in the proposed rule allocated to B&W reactors lack an adequate basis. They are not defined and it is not clear what is involved in the programs "Continuing Experimental Capability", "Once Through Steam Generator" and "Technical Integration Center" nor whether these costs should be allocated to B&W reactors. Some of these costs do not appear to be unique to B&W reactors. The proposed fee schedule improperly attributes a portion of the NRC costs of the Multi-Loop Integral System Test (MIST) facility to B&W owners. The B&W Owners Group and the NRC have agreed to co-fund the MIST Program and it is inconsistent with that agreement for the Commission to pass back its share of the MIST costs to B&W owners through license fees.

3. Joseph B. Knotts, Jr.

Bishop, Cook, Purcell & Reynolds (on behalf of 13 reactor applicants and licensees)

Opposes the second option and requests that the Commission withdraw the proposed rule and reissue a draft rule.

The Commission's proposal is invalid on four bases:

1. The proposed rule fails to exclude regulatory costs that serve independent public interests. It is fundamental under user fee case law that regulatory costs that relate to programs that provide independent public benefits are not recoverable from regulated entities. The District of Columbia Circuit recently acknowledged that the independent public benefits doctrine applies to COBRA. The Commission's claim that there are no independent public benefits associated with regulation of the power reactor industry is incorrect, comes too late, and is inconsistent with the Commission's previous position in this matter. In the proposed amendments, the Commission fails to meet its burden under Mississippi Power & Light. Instead the Commission concludes without explanation that there are no independent public benefits associated with NRC regulation of the power reactor industry. Although the record contains no information identifying the specific costs that comprise the Part 171 cost basis, it is evident that many NRC expenditures fall squarely within the definition of independent public benefit adopted in Mississippi Power & Light.

2. The proposed rule fails to relate adequately the fees assessed to individual licensees and the regulatory costs associated with particular licensees or categories of licensees. Although the Commission acknowledges that the Part 171 fees should reflect the varying degree to which NRC expenditures correspond to different licensees, the proposed rule falls far short of that goal. Although the proposed amendments are a step in the right direction, they fall far short of the Commission's stated goal. The proposed rule fails to take into account a number of other factors, i.e., type of containment, age of reactor, performance history, relative Part 170 fee responsibility. The result is that, under the proposed amendments, over 90 percent of Part 171 costs are treated as generic or "all reactor" costs, and fewer than 10 percent are assigned based on reactor characteristics. Moreover, the Commission's determinations of generic versus nongeneric costs appears arbitrary. For example, the proposed Part 171 cost basis treats as generic long-term validation for proposed replacement materials for BWRs. Under the proposed amendments, these costs will be recovered across the board, even though only BWR's benefit from the research. Other examples of nongeneric costs that have been treated under the proposed rule as applicable to all reactors include PWR severe accident analysis, research in severe accident vulnerabilities of, respectively, BWR Mark I, Mark II and Mark III containments and the portions of the Shippingport PWR aging studies that apply only to PWRs. A preliminary analysis of the Part 171 fee basis recently conducted by an NRC staff member indicated that the proposed amendments treat \$7 million of nongeneric projects as generic. In short, the proposed amendments fail to relate fees with services performed. To

correct that deficiency, the Commission should incorporate additional cost differentiating factors into the fee determination process.

3. The NRC has failed to explain adequately the Part 171 cost basis. For example, Table IV of the Supplementary Information lists various line items that comprise the \$83 million in generic research costs that are to be recovered from all reactor licensees. Nothing in the record explains how the line items were determined. There is no identification or description of the underlying costs thus the Commission has failed to provide the information that is necessary for meaningful comment.
4. NRC fails to give effect to the legislative history of COBRA, which demonstrates that Congress intended the 45 percent level in the statute to be a "ceiling" and not a "floor." The recovery of more than 45 percent of the NRC budget, and the deletion of the refund provision (Part 171.21), which is triggered when the statutory ceiling is exceeded, are inconsistent with legislative intent. During Senate consideration of this legislation, Senator Alan Simpson stated that the 45 percent level is intended as a ceiling, even though the new statutory provision uses contorted language to achieve that result. Consequently the NRC conclusion that the Congress intended the 45 percent level to be a floor rather than a ceiling is in error.

4. R. G. Bird, Senior Vice President, Nuclear

Boston Edison

Expresses concern at the general trend to increase fees and a related concern dealing with the ability to budget for such increased fees. Recommends adoption of Option 2 since this method would eliminate the need to adopt other changes to Parts 170 and 171. This would, in turn, enable a more predictable means for licensees to adjust 1988 budget monies and to forecast 1989 budgets.

5. A. E. Scherer, Director, Nuclear Licensing

Combustion Engineering

Strongly favors the second option which would not revise Part 170 and 171 other than to increase the per reactor annual fee. This would allow the NRC to collect fees up to a revised level of 45 percent of their budgeted costs. Believes several provisions of the proposal should be modified. The proposed revision would eliminate the ceiling on fees for the generic reviews of topical reports and standard designs. CE has long held the opinion that there should be no review fees assessed to the vendor for topical reports or for standard design approvals, since the case can be made that the vendor is not the primary beneficiary of the approved documents. The elimination of fee ceilings for all generic reviews will further exacerbate the situation. Believes the number of topical reports submitted by the nuclear

industry will fall even further because of elimination of fee ceilings. With the upper limit on the costs removed, the risk will be viewed as excessive and, hence, their viability questionable. Thus the NRC will be required to conduct plant-specific and repetitive reviews of technical issues. The Commission observation that an estimated \$23 million in fees were not collected because of fee ceilings does not necessarily justify ceiling removal. Instead, the Commission should compare the \$23 million in "lost" fees to the estimate of the staff resources "saved" through the elimination of repetitive reviews and the corresponding improved level of safety achieved.

There is a significant disincentive that is created by the proposed rule since it would allow the staff to accumulate charges without limit for such reviews. This approval is inconsistent with the Commission's stated intention of promoting standardization and generic reviews. Instead, it erects a needless impediment to these goals.

It is not clear from Table IV of proposed Part 171 what the basis is for the apportionment of staff expenditures between owners of PWRs of specific reactor vendors. Given the complexity and uncertainty involved in completing such a task in a fair and equitable manner, it may be more appropriate - except in the most extraordinary of cases - to charge a fixed rate for each reactor regardless of reactor type, vendor or location.

6. L. S. Goodman, Director, Nuclear Licensing

Detroit Edison

The proposed rule change applies to fiscal year 1988, even though the fiscal year is nearing completion. The timing is such that the increase for 1988 could not be budgeted. The NRC should publish a revised fee schedule that is applicable to the following year vs. the current year.

7. Hal B. Tucker, Vice President, Nuclear Production

Duke Power Company

The proposed rule appears to reflect a misconception that B&W plants as a group are problem plants deserving of the greatest expenditure of staff funds and manpower when compared with other reactor types. This implication is directly contrary to a recent decision of the Director, NRR, which denied the Union of Concerned Scientists 2.206 petition for suspension of B&W owners' operating licenses and construction permits. The decision makes clear that B&W reactors generally do not pose significantly greater problems or require significantly more NRC expenditures than other reactor types. Accordingly the fees for B&W reactors should be in line with those for other types of reactors.

The Program Support costs allocated to B&W reactors lack an adequate basis. The various programs for which fees are assessed (see Table IV) are not adequately defined. It is not clear that costs involved in

the program "Continuing Experimental Capability" and "Technical Integration Center" should be allocated to B&W reactors. The FTE's allocated to B&W reactors (3.8) are excessive when compared to the figure for other reactor types (3.6 for CE, Westinghouse and GE combined). Accordingly, the FTE calculation should be redone and brought in line with the figure for other reactors.

The proposed schedule improperly attributes a portion of the NRC's costs of the Multi-Loop Integral System Test (MIST) facility to B&W owners. The B&W owners group and the NRC have agreed to co-fund the MIST program and it is inconsistent with that agreement for the Commission to pass back its share of MIST costs to B&W owners via licensee fees. Additionally, the rule apparently includes NRC costs for other cooperative efforts such as Once Through Steam Generator Research.

8. K. R. Wilson, Manager, Nuclear Licensing

Florida Power Corporation

Endorse comments provided by Babcock and Wilcox Owners Group and Bishop, Cook, Purcell and Reynolds. Strongly believes that no rational basis for identifying a licensee as benefitting from agency research can be developed until the agency acts upon that research. The existence of information not relied upon for agency action is of no benefit whatsoever.

The grouping of plants east of the Rockies is meant to capture seismicity related costs. The licensees of peninsular Florida have long held that they should be excluded from this issue. The category should be modified to read east of the Rockies except peninsular Florida.

9. Robert C. Mitchell, Manager, Nuclear Products Licensing

General Electric Company

Are strongly encouraged by the proposed ten year deferral of fees for design certifications on standard designs. Are concerned, however, that the uncapped fee approach to cost recovery exposes a standard design applicant to unlimited liability. This will have a detrimental impact on standardization. Strongly recommends that the current limit of \$1.4 million be maintained for review and certification of standard plants. Recommends that all standard plant review and certification fees be waived until a workable review and certification process for standard plants has been demonstrated.

The \$20,000 cap in the current regulation for the review of special project (topicals) submittals should be retained. The removal of the cap for topical reports may have the unwanted effect of increasing the expenditure of staff resources and will discourage the submittal of generic topical reports. This will necessitate individual utility submittals which requires multiple staff reviews for each item. Applicants may not be as quick to submit state-of-the-art changes when a protracted review might ensue. This defeats the overall objective of encouraging new and improved predictive models and products.

10. J. H. Goldberg, Group Vice President, Nuclear

Houston Lighting & Power Company

Objects to the revisions of Part 170 which would remove current ceilings. Ceilings were established by NRC at the request of the regulated industry as a means of assigning predictability as to what the cost of the regulatory service would be. Because of proposed increase in the agency-wide professional staff-hour rate, considerations of predictability more than ever require the retention of ceilings.

With respect to proposed Part 171, continues to express belief that amended 7601 of COBRA, when read in the context of the body of judicial decisions construing similar user fee statutes, compels the NRC to first identify specific services benefiting individual licensees before proceeding to assess annual fees.

The Commission is in error in reading the 45 percent recovery rate as a floor rather than a ceiling. The Commission has failed to consider the single best explanation of the unclear language, namely, the statement of Senator Simpson clarifying the intention of Congress. The NRC must take action to insure that the aggregate of its fee collections does not exceed 45 percent of the FY 1988 and 1989 budgets. The obvious method of ensuring this result is to retain the refund mechanism found in 171.21 of the fee regulation.

11. Milton P. Alexich, Vice President

Indiana Michigan Power Company

Concur with comments submitted by Shaw, Pittman, Potts, and Trowbridge except that if the fees are to be raised, propose that second option be adopted. The second option is a more acceptable method of collecting the annual fee than that proposed since fee ceilings would be removed and an individual utility has only limited control over the allocation of NRC resources, and thus, a disproportionate burden could be placed on one utility and its rate payers. The amount of NRC attention received by a plant is largely outside of the plant's control, thus making the form of billing described in the proposed rule randomly unfair.

12. Harold F. Reis

Newman & Holtzinger, P.C. (on behalf of 3 reactor applicants and licensees)

Objects to the proposed removal of fee ceilings in Part 170. Because of the proposed increase in the agency-wide professional staff-hour rate, considerations of predictability more than ever require the retention of ceilings.

Objects to the proposed revisions of Part 171 for three reasons:

1. Amended Section 7601 of COBRA, when read in the context of the body of judicial decisions construing similar user fee statutes, compels the NRC to first identify specific services benefitting individual licensees before proceeding to assess annual fees. The proposed rule relies upon legal judgments which have been questioned and will seek review of the recent Florida Power & Light vs. United States case in the Supreme Court.
2. The Commission decision to assess an annual fee that is distinguished only by the geographic location (east or west of Rockies) and the reactor vendor (GE, CE, B&W or Westinghouse) is inconsistent with its stated belief that those licensees requiring the largest expenditures of NRC resources should pay the largest fees. As proposed, each member of a defined "class" will pay the same annual fee regardless of the individual demands imposed on the agency or the individual benefits received. The NRC should make an effort to further subdivide the few classes identified down to the level of individual power reactor operating licenses of which there are only 110. The Commission cannot seriously believe that all of one vendor's power reactors east of the Rockies, for example, impose identical demands on the Commission and accordingly should be assessed the same annual fee. The NRC stops short of its articulated goals, and the classification is not rationally justified.

3. The Commission is in error in reading the 45 percent recovery rate as a floor rather than a ceiling. The Commission failed to consult the statement made by Senator Simpson clarifying the intention of Congress in enacting the provision. The NRC must take action to ensure that the aggregate of its fee collections does not exceed 45 percent of the FY 1988 and 1989 budgets. The obvious method of ensuring this result is to retain the refund mechanism found in Part 171.21 of the regulations.

13. R. O. Williams, Jr., Vice President, Nuclear Operations

Public Service Company of Colorado

Supports Option 2 and recognizes that any additional money required this year (FY 1988) will have to be made up under Part 171 fees.

Suggests that Section 171.11, Exemptions, be revised to include consideration of rate base treatment of Part 170 and 171 fees. Some utilities are unable to recover the proposed new fees through increased rates while other can. For those that cannot recover the increased fees, the impact of the proposed fees constitutes a rate reduction without appropriate hearing.

14. David S. Kaplan, General Counsel

Sacramento Municipal Utility District

Supports comments filed by Shaw, Pittman, Potts and Trowbridge.

The table in the proposed Section 171.15(c) sets forth additional per reactor fees which vary according to the manufacturer. For B&W reactors these fees are inappropriate because it includes amounts which the NRC agreed to pay. The NRC should not be allowed to renege on previously adopted cost-sharing arrangements. NRC contract 04-83-168 (6/6/83) provides that NRC provide a cash contribution of about \$15 million for the MIST program. The B&W utilities, the Electric Power Research Institute and B&W agreed to contributions of about \$6.6 million. It is improper for NRC to seek to avoid both the letter and spirit of the MIST agreement by trying to recover its costs of the MIST program, and for any other similarly funded programs in the guise of increases to the Part 171 annual charge.

15. Jay E. Silberg, P.C.

Shaw Pittman Potts and Trowbridge (on behalf of 17 applicants and licensees)

Opposes Option 2 to amend Part 171 while leaving Part 170 untouched. The proposed rule suffers from the same infirmities as the current Part 171 in that the fee amounts to an agency imposed tax and that it seeks to charge licensees for the costs of independent public benefits.

Strongly disagrees with the Commission's interpretation of the statute relating to the 45 percent recovery. Also disagrees with NRC's continued efforts to single out nuclear power reactor licensees for full cost payments under the Part 170 and Part 171.

Urges that the Commission modify the proposed rule as follows:

1. Provide that the annual fee base rise first to 39 percent (33 percent and 6 percent) in FY 1988 and then to 45 percent (39 percent and + 6 percent) in FY 1989 after first taking full account of all collections received by the NRC from any source during each fiscal year.
2. Remove all fee ceilings from the Part 170 fees, particularly those applicable to material licensees, and to impose an annual fee on those licensees as well. Many of NRC's generic research activities being undertaken have obvious benefits to licensees other than power reactor licensees and it is clear from a review of the NRC budget that other research activities not listed in the basis for the annual fee are being undertaken by NRC which can and should be properly charged against all NRC licensees. NRC should treat power reactor licensees, and other licensees with an even hand. There is no reason why the cost of services pertinent to materials licensees or "generic" nuclear research activities should not be allocated on some equitable basis among the appropriate classes of NRC licensees. A number of allocation methods are possible. For example, quantities of materials handled could serve as an

appropriate measure of the annual fee for those other licensees. At a minimum, full cost pricing (whether on a fixed fee or an open ended basis) should be employed. The NRC should remove the fixed application fees which remain in proposed 170.21. A substantial arbitrary fixed application fee is no longer appropriate since the facility fees are on a pay as you go basis.

3. More precisely allocate "generic" costs in relation to the benefits each licensee receives. While the NRC has now made a modest effort to address more precisely the cost side of the equation through changes to the fee structure, it still has done nothing to estimate the benefits of NRC services to individual licensees or to tie the amount of the fee to those benefits.
4. Changes need to be made in the proposed regulatory amendments as follows:
 - a) The statute clearly provides for increased percentage recovery in FY 1988 and 1989 only yet the NRC has deleted completely those parts of the rule which reflect the current 33 percent ceiling, e.g., 171.15(c) (d) & (e); 171.21.
 - b) The discussion on page 24081 makes reference to a factor "M" and to a formula utilizing that factor. The "M" factor is not defined and nowhere appears in the final regulation.

c) Nowhere is provision made for assessment of an annual fee for FY 1989.

5. The NRC is seeking to recover for a reactor class costs for the MIST program which NRC has contractually committed to pay. It is improper for the NRC to use this annual charges rulemaking to avoid its prior agreement.
6. The proposed rule provides for the deferral of review fees for facility reference standardized design approvals. The effect of this unique treatment is to reduce, at least temporarily, the amount of fees collected under Part 170, thus requiring an increase in Part 171 fees. Thus power reactor licensee annual charges will be higher than if the vendors are assessed the costs as the review progresses. While the NRC should properly seek to encourage standardization, it is inappropriate to do this by increasing the annual charges paid by licensees.

16. M. O. Medford, Manager of Nuclear Engineering and Licensing

Southern California Edison Company

Endorses comments of Bishop, Cook, Purcell and Reynolds. The Commission should withdraw the proposed rule. Any rule adopted should (1) exclude costs that service independent public interests, (2) determine Part 171 fees based upon individual licensee and applicant costs to the

Commission, (3) adequately explain the cost basis underlying the proposed amendments and (4) provide for refunds for licensees if the statutory ceiling of 45 percent is exceeded.

17. Donald C. Shelton, Vice President, Nuclear

Toledo Edison Company

Shares the comments submitted by Shaw, Pittman, Potts and Trowbridge. The annual fee is unconstitutional in that it amounts to a "tax" and that it charges licensees for the costs of independent public benefits. The amount of money collected from fines, penalties and interest should be included in the increased percentage to be collected. An annual fee should be charged to all NRC licensees because many of NRC's generic research activities have obvious benefits to licensees other than power reactors. Strongly recommends that previous cost-sharing agreements (MIST) be maintained and not included for recovery under Part 171. Disagrees with Option 2. Strongly agrees with the removal of reactor amendment application fees as they are an unnecessary burden on both the licensee and the NRC staff.

18. Donald W. Edwards, Director, Industry Affairs

Yankee Atomic Electric Company

Endorses the comments of Shaw, Pittman, Potts or Trowbridge. Questions whether proposed schedule accomplishes goal that such charges should

be reasonably related to the regulatory service provided by the Commission and fairly reflect the cost of providing the service.

Questions the proposed Section 170.12 which would defer the assessment of costs for the review and certification of standard reference designs until such time as the design is referenced or for a period of 5 (or potentially 10) years. If the Commission's policy is to be consistent with Section 7601 of COBRA, the proposed change should assure that the applicants for certification of standard reference designs bear the full cost of the regulatory review. This is most likely to be accomplished if the cost of services is assessed in the same fiscal period that the services are rendered.

With respect to Part 171, seriously questions whether current power reactor licensees are the sole "beneficiaries" of the programs which are identified as the bases for the Part 171 fee schedule. Is it reasonable to assume that material licensees derive no benefit from the considerable resources expended in research related to radiation protection and health effects?

Oppose adoption of Option 2.

Group 2List of Materials LicenseeCommenters and Summary of the Comments

Advanced Nuclear Fuels Corporation

Bethlehem Steel Corporation

Carl E. Cassidy, M.D.

Choate Symmes Health Services

Health Physics Associates

Lixi, Inc.

Marborough Hospital

Massachusetts Institute of Technology

Nuclear Fuel Services, Inc.

Transnuclear, Inc.

Universal Testing Company

Materials Comments

1. C. W. Malody, Manager, Corporate Licensing

Advanced Nuclear Fuels Corporation

Recommends that NRC adopt Option 2. Strongly supports the need for fee ceilings. Ceilings should be adjusted to allow for an equitable distribution of the required NRC revenue increase. Ceilings provide a manageable and predictable basis for handling NRC costs. For topical reports, these benefits include a fair recovery of NRC costs while not potentially discouraging submittals because of the potentials for an open-ended fee.

2. T. E. Kobrick

Bethlehem Steel Corporation

Strongly objects to proposed elimination of maximum inspection frequency. No adequate justification for eliminating this protection to the licensee and are concerned with the potential for abuse.

3. Carl E. Cassidy, M.D.

Tufts University School of Medicine

Opposes elimination of fixed frequency for routine inspections. The proposed change creates the potential for considerable charges to licensees because

of the possibility of an increased number of routine inspections. Increased frequency of routine inspections would increase revenues for the NRC which one could consider to be a conflict of interest. The licensee must have a predictable inspection expense.

4. Jeanne M. Elia, Adm. Director Radiology Services

Choate Symmes Health Services

Favors the current fee regulation where there is a fixed frequency for routine inspections. The proposed elimination of the frequency leaves the licensee wide open for fiscal imbalance and presents a fiscal insecurity for the hospital.

5. A. Lamastra, President

Health Physics Associates

Strong requests retention of maximum routine inspection frequencies. Proposed elimination inspection frequencies creates potential for abuses. There could be a tendency to inspect licensees more frequently. This could have a severe financial impact on licensees. Objects to fees assessed for category 3N as compared to other fee categories. Commission should review the apparent disparity and provide more equity in the fee schedule.

6. Robert J. Savini, Executive Vice President

Lixi, Inc.

Requests that NRC create a new category for diagnostic devices and reduce license and inspection fees to be comparable to industrial users of their Lixi Imaging Scope I-125 sealed sources. There is no distinction between a user with one or two sources for diagnostic use and a hospital that has many sources for teletherapy use.

7. Earl Gabor, Radiology Administrator

Marlborough Hospital

Urges retention of a fixed frequency for routine inspection. The proposed changes might cause significant increase in expenses since the hospital has no control over the frequency of inspections and thus no fiscal control over their inspection fee budget.

8. Frank Masse, Director, Radiation Protection Programs

Massachusetts Institute of Technology

Retain current inspection provision in order for licensee to have a predictable inspection expense. NRC creates a potential conflict of interest with this change in that increased frequencies of routine inspection will yield increased revenues to the Commission.

9. J.A. Long, General Manager

Nuclear Fuel Services, Inc.

Considers the concept of full cost recovery of renewal review as reasonable; however, believes that the license term should be extended beyond the nominal five years to ten years or longer. If license update should become necessary due to technology changes, it could readily be accomplished through the amendment procedure. The overall cost of license renewal may be very significant to most licensees particularly in small and medium sized companies. The proposed license renewal fees are undefined, open-ended and obviously beyond any cost control of the licensee. The term of the license should be specified in Part 70 as it is in Part 73.

10. Bill R. Teer, Senior Vice President

Transnuclear, Inc.

Proposed fees would have significant economic impact on the company and would adversely affect competitive position. Strongly recommends adoption of Option 2 since primary beneficiaries of regulatory process will pay for efforts expended. If Option 2 is not adopted, retain ceilings for topical reports and transportation packages or in the alternative can support a modest increase in the ceilings to reflect increased staff costs. If ceilings removed those applications filed prior to the effective date of the revised Part 170 should not be subject to the revised fees. The possibility

of an open-ended fee will inhibit the development of new products and service procedures by smaller companies. Provides comments as small entity in accordance with Section VIII of proposed rule.

11. Brent Mockli, Radiation Safety Officer

Universal Testing Company

Objects to proposed elimination of maximum inspection frequency. In the long term, eliminating the frequency provides a viable option to produce cash when necessary. More stringent corrective action for violations is more appropriate rather than more frequency inspections.

Group 3

Federal and State Agency Comments

Department of Energy

Illinois Department of Nuclear Safety

Federal and State Agency Comments

1. Delbert F. Bunch, Principal Deputy Assistant Secretary for Nuclear Energy

Department of Energy

The basic approach of the proposed rule calls for "full cost" recovery of the expenditures made by NRC in reviewing standard plant designs. Since the development and certification of advanced plant designs is in the national interest, it does not appear desirable for the Federal Government to increase the economic disincentive to their development through a licensing fee policy as proposed. Because of the advanced nature of these plants which will incorporate new approaches to ensuring safety, it is possible that extensive safety reviews of first-of-a-kind features will be necessary to ensure that all relevant safety concerns have been fully aired. The most desirable approach would be for the NRC to grant a waiver of the fees for design reviews and certification of advanced standard plant designs.

2. Terry R. Lash, Director, Illinois Department of Nuclear Safety

State of Illinois

Opposes the proposed revision because it would assess additional licensing fees on nuclear power reactors and uranium fuel cycle facilities while leaving largely unchanged the fees assessed on

material licensees. There is nothing fair about a fee system that would increase fees on power reactors and uranium fuel cycle facilities by 33 percent or more, while leaving materials license fees at the same level that they were in 1984.

Any modifications of the fee schedules should be sensitive to the impact it might have on Agreement States. Agreement States find it difficult to assess fees that are higher than those assessed by the NRC. Thus, to the extent that it is willing to subsidize materials licensing activities through reactor license fees, NRC condemns Agreement States to being underfunded. This might encourage current Agreement States to return regulatory authority to the NRC, thus increasing significantly the costs incurred by the NRC in licensing materials users. Underfunding would also discourage other states from pursuing Agreement State status.

Supports NRC's proposal to (1) revise the staff rate from \$60 to \$80 per hour, (2) revise the staff rate each fiscal year, (3) remove ceilings on the collection of fees assessed at full cost and (4) to charge for all inspections. Believes the rule would be better if NRC would remove flat fees for the license categories contained in 170.31.

Enclosure 3

The Honorable John B. Breaux, Chairman
Subcommittee on Nuclear Regulation
Committee on Environment and Public Works
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

On June 27, 1988, the Commission published proposed changes to 10 CFR 170 and 171 of the Commission's fee regulations in the Federal Register.

These proposed rule changes were required as a result of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203) enacted by Congress in December 1987. This Act requires the Commission to collect not less than 45 percent of its budget in licensing fees, services, and annual fees for fiscal years 1988 and 1989. By letter dated August 17, 1988, we informed you of the issuance of an interim rule change to 10 CFR 171 which permitted the Commission to collect the mandated 45 percent (in lieu of 33 percent) before the end of fiscal year 1988. The Commission collected 45 percent of its budget in fiscal year 1988.

Enclosed is a copy of the final rulemaking for 10 CFR 170 and 171 that has been published in the Federal Register with an effective date 30 days from publication. This final rulemaking is being issued basically as proposed on June 27, 1988, except for changes in the hourly professional staff rate in 10 CFR 170.20 and the range of annual fees to be charged

under 10 CFR 171 for each operating nuclear power plant. These changes are as a result of the proposed rule rates being based on fiscal year 1988 budget costs while the final rule rates are based on fiscal year 1989 budget costs. The final rulemaking supersedes the interim rule of August 1988 and permits the Commission to recover at least 45 percent of the NRC budget for fiscal year 1989.

Sincerely,

William G. McDonald, Director
Office of Administration and
Resources Management

Enclosure:
Final Rulemaking Notice

cc w/enc! : Senator Alan K. Simpson

(Identical letters will be sent to Sharp,
Udall, Johnston and Beville).

DRAFT

NRC AMENDS FEE SCHEDULES

The Nuclear Regulatory Commission is amending its fee schedules as contained in Parts 170 and 171 of the Commission's regulations. The amendments are designed to assure that those licensees requiring the greatest expenditure of Commission resources pay the greatest annual fee and to increase the total fees collected to an amount that equals at least 45 percent of the Commission's fiscal year 1989 budget as required by the Omnibus Budget Reconciliation Act of 1987.

The fees charged under Part 170 are designed to recover the agency's costs which are directly attributable to an identifiable licensee such as license application reviews and inspections. These fees are authorized by the Independent Offices Appropriation Act of 1952. The annual fees charged under Part 171 are designed to recover generic costs applicable to all nuclear power reactor licensees but not directly attributable to a specific licensee such as research and rulemaking. These fees are authorized by the Consolidated Omnibus Budget Reconciliation Act of 1985.

The amendments will:

- (1) remove the Part 170 fee ceilings for reactor, fuel cycle facility, transportation cask packages and shipping container application reviews and inspections;

- (2) revise the hourly rate for NRC professional time spent providing various regulatory services and provide for annual adjustment;
- (3) revise upward the ceiling on annual charges in Part 171;
- (4) include, when appropriate, reimbursements from the Department of Energy Nuclear Waste Fund;
- (5) charge for each routine and nonroutine inspection conducted by the NRC staff;
- (6) remove amendment application fees for reactor facilities and reactor-related reports; and
- (7) remove the application fee and permit deferral of review and certification fees until a standardization design is referenced.

The amendments to Parts 170 and 171 of the Commission's regulation will become effective on (date).

After proposing these amendments for public comment in June of this year, the Commission amended Part 171 of its regulations, on an interim basis, to increase by 12 percent the annual fees charged to utility owners of licensed nuclear power plants. This action was taken to permit the Commission to increase--during the pendency of this rulemaking--the total fees it collects to an amount that equals at least 45 percent of its fiscal year 1988 budget as required by the Omnibus Budget Reconciliation Act of 1987.